

Original Application

Knoxville Eye Surgery
Center, LLC

CN1702-010

Certificate of Need Application

for

Replacement of Single-Specialty ASTC

Knoxville Eye Surgery Center, LLC
140 Capital Drive
Knoxville, TN 37922
Contact: Melanie Burgess, Administrator
865-251-0338



State of Tennessee

Health Services and Development Agency

Andrew Jackson Building, 9th Floor, 502 Deaderick Street, Nashville, TN 37243

www.tn.gov/hsda Phone: 615-741-2364 Fax: 615-741-9884

CERTIFICATE OF NEED APPLICATION

SECTION A: APPLICANT PROFILE

1. Name of Facility, Agency, or Institution

Knoxville Eye Surgery Center, LLC, d/b/a Tennessee Valley Eye Center
Name

160 Capital Drive
Street or Route

Knox
County

Knoxville
City

TN
State

37922
Zip Code

Website address: www.tveyecenter.com

Note: The facility's name and address **must be** the name and address of the project and **must be** consistent with the Publication of Intent.

2. Contact Person Available for Responses to Questions

Melanie B. Burgess
Name

Administrator
Title

Knoxville Eye Surgery Center, LLC
Company Name

melanieb@tveyecenter.com
Email address

140 Capital Drive
Street or Route

Knoxville
City

TN 37922
State Zip Code

Employee
Association with Owner

865-251-0338
Phone Number

865-251-0328
Fax Number

NOTE: **Section A** is intended to give the applicant an opportunity to describe the project. **Section B** addresses how the project relates to the criteria for a Certificate of Need by addressing: Need, Economic Feasibility, Contribution to the Orderly Development of Health Care, and Quality Measures.

Please answer all questions on 8½" X 11" white paper, clearly typed and spaced, single or double-sided, in order and sequentially numbered. In answering, please type the question and the response. All questions must be answered. If an item does not apply, please indicate "N/A" (not applicable). Attach appropriate documentation as an Appendix at the end of the application and reference the applicable Item Number on the attachment, i.e., Attachment A.1, A.2, etc. The last page of the application should be a completed signed and notarized affidavit.

HF-0004 Revised 12/2016 – All forms prior to this time are obsolete.

RDA 1651

3. SECTION A: EXECUTIVE SUMMARY

A. Overview

Please provide an overview not to exceed three pages in total explaining each numbered point.

- 1) Description – Address the establishment of a health care institution, initiation of health services, bed complement changes, and/or how this project relates to any other outstanding but unimplemented certificates of need held by the applicant;
- 2) Ownership structure;
- 3) Service area;
- 4) Existing similar service providers;
- 5) Project cost;
- 6) Funding;
- 7) Financial Feasibility including when the proposal will realize a positive financial margin; and
- 8) Staffing.

The proposed project is to build a replacement ASTC for Knoxville Eye Surgery Center, LLC, d/b/a Tennessee Valley Eye Center ("KESC") on the land adjacent to the current center, expanding from four operating rooms to six operating rooms. KESC is located in a two-story building, with the ASTC located on the second floor and leased clinic space on the first floor. There are multiple factors driving the need to replace and expand the ASTC, including capacity constraints in the operating rooms and waiting areas, aged mechanical systems that are driving excessive utilities costs, and the opportunity to provide additional space for tenants in the existing building.

Ownership Structure

KESC is a physician-owned, freestanding ASTC established in 1999. KESC is owned by 24 surgeons, all of whom are practicing ophthalmologists with a variety of sub-specialties, including general ophthalmology, cataract and refractive surgery, glaucoma surgery, retina surgery, oculo-plastics and strabismus/muscle surgery. For a full listing of the current physician owners of KESC, please see attachment A.3.A.2a. Each individual physician owns less than 5% of KESC.

Service Area

KESC serves a primary service area consisting of nine counties, including Knox, Blount, Sevier, Loudon, Campbell, Anderson, Jefferson, Claiborne and Hamblen counties. While we have provided care for patients from 46 counties in Tennessee as well as patients from seven other states in the past year, the nine-county primary service area includes the counties of origin for 86% of KESC's patients. For a chart showing patient origin by county and the service area calculation, please see attachment A.3.A.2b.

Existing Similar Service Providers

In addition to KESC, there are four other ASTCs providing ophthalmic surgery services in the primary service area. Those centers are:

- The Eye Surgery Center of Oak Ridge, LLC***
- Eye Surgery Center of East Tennessee, LLC***
- Physicians Surgery Center of Knoxville, LLC (multi-specialty), and***
- Southeast Eye Surgery Center***

In addition, there is a pending CON application, scheduled to be heard during the February, 2017 HSDA meeting, for a new ophthalmology ASTC: Eye Surgery Center of Knoxville (CN1611-038).

In every case, the existing providers are at or above optimum capacity, as defined by the Certificate of Need Standards and Criteria, which will still be the case even if the two operating rooms requested by Eye Surgery Center of Knoxville are approved and added to the market.

Project Cost

The total cost of the project is estimated to be \$7,063,651. Of this total project cost, \$3,890,826 is related to project construction, \$650,814 is for fixed equipment, \$604,484 is for moveable equipment, \$677,783 is for preparation of the site, and \$1,239,744 is administrative, financing, consultant and legal costs, contingency, and the filing fee.

Project Funding

Project funding will be in the form of a commercial loan provided by First Tennessee Bank. First Tennessee Bank has reviewed the project and has agreed to lend KESC the capital for the project.

Financial Feasibility

The project is financially feasible. As a long-standing, profitable operation, KESC will continue to realize a positive margin while developing and implementing the facility project. There is no period in which it is anticipated that KESC will experience a financial loss.

Staffing

With the addition of two operating rooms, additional staffing will be required, particularly OR circulating nurses, surgical technicians, and pre-and post-op nurses. In addition to the current staff, it is expected that 2 additional OR circulating nurses (RN), 2 Pre-and Post-Op nurses (RN), and 3 Certified Surgical Technicians will be needed. According to the Tennessee Department of Labor, there are sufficient human resources available in the area to fulfill these staffing requirements.

B. Rationale for Approval

A certificate of need can only be granted when a project is necessary to provide needed health care in the area to be served, can be economically accomplished and maintained, will provide health care that meets appropriate quality standards, and will contribute to the orderly development of adequate and effective health care in the service area. This section

should provide rationale for each criterion using the data and information points provided in Section B. of this application. Please summarize in one page or less each of the criteria:

- 1) Need;
- 2) Economic Feasibility;
- 3) Appropriate Quality Standards; and
- 4) Orderly Development to adequate and effective health care.

1) Need

KESC is currently capacity constrained in terms of both surgical block time and waiting room space. With both high-volume/quick-turn cataract surgery as well as lengthier retina, cornea, and glaucoma surgeries being performed, KESC is far above the guidelines for growth in the Certificate of Need Standards and Criteria for ASTCs. In 2016, KESC performed 2,293 cases per operating room, which is 259% of optimum utilization as defined by the Standards and Criteria.

Other ASTCs in the service area performing ophthalmology surgery are also running above optimum capacity, as defined by the Standards and Criteria:

- ***The Eye Surgery Center of Oak Ridge, LLC – 141.1%***
- ***Eye Surgery Center of East Tennessee, LLC – 165.7%***
- ***Physicians Surgery Center of Knoxville (multi-specialty) – 101.2%***
- ***Southeast Eye Surgery Center – 208.5%***
- ***Ophthalmology ASTCs - Total Service Area – 192.9%***

The primary portion of the population being served by KESC and other ophthalmology ASTCs is over age 65. In the nine-county primary service area served by KESC, the population age 65+ is growing at a rate almost four times that of the general population (3.9% per year versus 1.1% per year). The need for ophthalmology services will continue to grow as this portion of the population continues to grow at a faster rate than the overall population. The proposed project enables KESC to continue to serve the target population in a facility that can provide sufficient waiting area space as well as enough operating rooms to enable efficient care for this growing demographic.

2) Economic Feasibility

KESC has been in business since 1999 and has been operating profitably since 2001. While the proposed project does entail taking on debt, the surgical volumes and expense structure are such that the business will continue to be profitable, even in the first two years of the proposed project. There will be no impact to patient charges or costs as a result of the proposed project.

ASTCs are the most efficient environment in which to perform ophthalmology surgery, costing the healthcare system approximately half as much as performing the same surgery in a hospital setting. Through this replacement and expansion project, KESC will expand its capacity to provide high-quality and cost-effective surgical services, within a successful business model.

3) Appropriate Quality Standards

KESC is accredited by the Accreditation Association for Ambulatory Healthcare (AAAHC) and in good standing with the State of Tennessee Department of Licensure

for Healthcare Facilities. As an accredited ASTC, KESC has satisfactorily met each area required for accreditation, including governance, administration, quality of care, quality improvements and quality management, clinical records, and medication management.

The proposed project is supportive of KESC's ability to continue to meet these requirements, as well as to continue to be more efficient, provide a more patient-friendly environment, and meet the ophthalmic surgery needs of the community.

4) Orderly Development to adequate and effective healthcare

The proposed project is an expansion of an ASTC that has been in operation since 1999, on property adjacent to the existing building, purchased 18 years ago for the purpose of an eventual expansion. The sole purpose of this project is to enable KESC to continue to serve its existing patient base as that population grows and to create capacity to allow the physician practices who are doing their surgery at KESC to add surgeons to their practices and provide them with adequate surgical time. With every ophthalmology ASTC in the service area over the guidelines for full capacity and optimum capacity, this project is needed in order to meet the needs of the growing target population.

KESC provides ophthalmic surgery in the lowest cost setting, an ASTC instead of a hospital. Increasing capacity to provide highly efficient services in an environment that is accessible and attractive to patients will help KESC continue to fulfill its mission of restoring sight by providing high quality surgical services in a cost-effective manner.

C. Consent Calendar Justification

If Consent Calendar is requested, please provide the rationale for an expedited review.

Consent calendar is not being requested. N/A.

A request for Consent Calendar must be in the form of a written communication to the Agency's Executive Director at the time the application is filed.

4. SECTION A: PROJECT DETAILS

Owner of the Facility, Agency, or Institution

A. Knoxville Eye Surgery Center, LLC 865-251-0338
Name Phone Number

140 Capital Drive, Suite 2 Knox
Street or Route County

Knoxville TN 37922
City State Zip Code

B. Type of Ownership of Control (Check One)

A. Sole Proprietorship	_____	F. Government	_____
B. Partnership	_____	G. Joint Venture	_____
C. Limited Partnership	_____	H. Limited Liability Company	<u>X</u>
D. Corporation (For Profit)	_____	I. Other (Specify)	_____

Attach a copy of the partnership agreement, or corporate charter and certificate of corporate existence. Please provide documentation of the active status of the entity from the Tennessee Secretary of State's web-site at <https://tnbear.tn.gov/ECommerce/FilingSearch.aspx>. **See Attachment A.4A.**

Describe the existing or proposed ownership structure of the applicant, including an ownership structure organizational chart. Explain the corporate structure and the manner in which all entities of the ownership structure relate to the applicant. As applicable, identify the members of the ownership entity and each member's percentage of ownership, for those members with 5% ownership (direct or indirect) interest. **See attachment Section A.4B.**

5. Name of Management/Operating Entity (If Applicable)

N/A
Name

Street or Route

County

City

State

Zip Code

For new facilities or existing facilities without a current management agreement, attach a copy of a draft management agreement that at least includes the anticipated scope of management services to be provided, the anticipated term of the agreement, and the anticipated management fee payment methodology and schedule. For facilities with existing management agreements, attach a copy of the fully executed final contract. Attachment Section A-5. – Not Applicable.

6A. Legal Interest in the Site of the Institution (Check One)

- | | | | |
|-------------------------------------|-------------------|--------------------|-------------------|
| A. Ownership | <u> X </u> | D. Option to Lease | <u> </u> |
| B. Option to Purchase | <u> </u> | E. Other (Specify) | <u> </u> |
| C. Lease of <u> </u> Years | <u> </u> | | |

Check appropriate line above: For applicants or applicant's parent company/owner that currently own the building/land for the project location, attach a copy of the title/deed. For applicants or applicant's parent company/owner that currently lease the building/land for the project location, attach a copy of the fully executed lease agreement. For projects where the location of the project has not been secured, attach a fully executed document including Option to Purchase Agreement, Option to Lease Agreement, or other appropriate documentation. Option to Purchase Agreements **must include** anticipated purchase price. Lease/Option to Lease Agreements **must include** the actual/anticipated term of the agreement **and** actual/anticipated lease expense. The legal interests described herein **must be valid** on the date of the Agency's consideration of the certificate of need application.

Deed attached as attachment Section A-6A.

6B. Attach a copy of the site's plot plan, floor plan, and if applicable, public transportation route to and from the site on an 8 1/2" x 11" sheet of white paper, single or double-sided. DO NOT SUBMIT BLUEPRINTS. Simple line drawings should be submitted and need not be drawn to scale.

1) Plot Plan **must include**:

- a. Size of site (*in acres*);
- b. Location of structure on the site;
- c. Location of the proposed construction/renovation; and
- d. Names of streets, roads or highway that cross or border the site.

Attached as attachment A.6B-1 a-d

- 2) Attach a floor plan drawing for the facility which includes legible labeling of patient care rooms (noting private or semi-private), ancillary areas, equipment areas, etc. On an 8 1/2 by 11 sheet of paper or as many as necessary to illustrate the floor plan.

Attached as attachment A.6B-2

- 3) Describe the relationship of the site to public transportation routes, if any, and to any highway or major road developments in the area. Describe the accessibility of the proposed site to patients/clients.

The site is not serviced by the Knoxville Area Transit Authority. Community Action Committee (CAC) and East Tennessee Human Resource Agency (ETHRA) do provide transportation assistance to patients in need of assistance.

7. **Type of Institution** (Check as appropriate--more than one response may apply)

- | | |
|--|--|
| A. Hospital (Specify) _____ | H. Nursing Home _____ |
| B. Ambulatory Surgical Treatment Center (ASTC), Multi-Specialty _____ | I. Outpatient Diagnostic Center _____ |
| C. ASTC, Single Specialty <u>X</u> _____ | J. Rehabilitation Facility _____ |
| D. Home Health Agency _____ | K. Residential Hospice _____ |
| E. Hospice _____ | L. Nonresidential Substitution-Based Treatment Center for Opiate Addiction _____ |
| F. Mental Health Hospital _____ | M. Other (Specify) _____ |
| G. Intellectual Disability Institutional Habilitation Facility ICF/IID _____ | |

Check appropriate lines(s).

8. **Purpose of Review** (Check appropriate lines(s) – more than one response may apply)

- | | |
|--|---|
| A. New Institution _____ | F. Change in Bed Complement _____ |
| B. Modifying an ASTC with limitation still required per CON <u>X</u> _____ | [Please note the type of change by underlining the appropriate response: Increase, Decrease, Designation, Distribution, Conversion, Relocation] |
| C. Addition of MRI Unit _____ | G. Satellite Emergency Dept. _____ |
| D. Pediatric MRI _____ | H. Change of Location <u>X</u> _____ |
| E. Initiation of Health Care Service as defined in T.C.A. §68-11-1607(4) (Specify) _____ | I. Other (Specify) _____ |

9. **Medicaid/TennCare, Medicare Participation**

MCO Contracts [Check all that apply]

X AmeriGroup X United Healthcare Community Plan X BlueCare X TennCare Select

Medicare Provider Number 3288304

Medicaid Provider Number 3288304

Certification Type Ambulatory Surgical Treatment Center

If a new facility, will certification be sought for Medicare and/or Medicaid/TennCare?

Medicare Yes No N/A Medicaid/TennCare Yes No N/A

10.

Bed Complement Data

A.

Please indicate current and proposed distribution and certification of facility beds.

Not Applicable

	<u>Current Licensed</u>	<u>Beds Staffed</u>	<u>Beds Proposed</u>	<u>*Beds Approved</u>	<u>**Beds Exempted</u>	<u>TOTAL Beds at Completion</u>
1) Medical						
2) Surgical						
3) ICU/CCU						
4) Obstetrical						
5) NICU						
6) Pediatric						
7) Adult Psychiatric						
8) Geriatric Psychiatric						
9) Child/Adolescent Psychiatric						
10) Rehabilitation						
11) Adult Chemical Dependency						
12) Child/Adolescent Chemical Dependency						
13) Long-Term Care Hospital						
14) Swing Beds						
15) Nursing Home – SNF (Medicare only)						
16) Nursing Home – NF (Medicaid only)						
17) Nursing Home – SNF/NF (dually certified Medicare/Medicaid)						
18) Nursing Home – Licensed (non-certified)						
19) ICF/IID						
20) Residential Hospice						
TOTAL						

*Beds approved but not yet in service

**Beds exempted under 10% per 3 year provision

B. Describe the reasons for change in bed allocations and describe the impact the bed change will have on the applicant facility's existing services. **Attachment Section A-10. Not Applicable**

C. Please identify all the applicant's outstanding Certificate of Need projects that have a licensed bed change component. If applicable, complete chart below.

CON Number(s)	CON Expiration Date	Total Licensed Beds Approved
N/A		

11. Home Health Care Organizations – Home Health Agency, Hospice Agency (excluding Residential Hospice), identify the following by checking all that apply: **Not Applicable**

	Existing Licensed County	Parent Office County	Proposed Licensed County		Existing Licensed County	Parent Office County	Proposed Licensed County
Anderson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Lauderdale	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bedford	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Lawrence	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Benton	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Lewis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bledsoe	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Lincoln	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Blount	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Loudon	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bradley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	McMinn	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Campbell	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	McNairy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cannon	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Macon	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Carroll	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Madison	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Carter	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Marion	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cheatham	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Marshall	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chester	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Mauzy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Claiborne	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Meigs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Clay	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Monroe	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cocke	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Montgomery	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Coffee	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Moore	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Crockett	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Morgan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cumberland	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Obion	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Davidson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Overton	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Decatur	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Perry	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DeKalb	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Pickett	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dickson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Polk	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dyer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Putnam	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fayette	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Rhea	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fentress	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Roane	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Franklin	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Robertson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gibson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Rutherford	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Giles	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Scott	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Grainger	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Sequatchie	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Greene	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Sevier	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Grundy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Shelby	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hamblen	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Smith	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hamilton	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Stewart	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hancock	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Sullivan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hardeman	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Sumner	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hardin	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Tipton	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hawkins	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Trousdale	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Haywood	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Unicoi	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Henderson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Union	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Henry	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Van Buren	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hickman	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Warren	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Houston	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Washington	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Humphreys	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Wayne	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jackson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Weakley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jefferson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	White	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Johnson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Williamson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Knox	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Wilson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lake	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				

12. Square Footage and Cost Per Square Footage Chart

Unit/Department	Existing Location	Existing SF	Temporary Location	Proposed Final Location	Proposed Final Square Footage						
					Renovated	New	Total				
ASTC		13,233	N/A	18,176		18,176	18,176				
Unit/Department GSF Sub-Total											
Other GSF Total											
Total GSF											
*Total Cost						\$ 3,890,826	\$ 3,890,826				
**Cost Per Square Foot						\$214.06	\$214.06				
<p>Cost per Square Foot Is Within Which Range (For quartile ranges, please refer to the Applicant's Toolbox on www.tn.gov/hsda)</p> <p>Per the HSDA website, a cost range is not available for ASTC's, due to insufficient sample size.</p>					<input type="checkbox"/> Below 1 st Quartile	<input type="checkbox"/> Below 1 st Quartile	<input type="checkbox"/> Below 1 st Quartile				
					<input type="checkbox"/> Between 1 st and 2 nd Quartile	<input type="checkbox"/> Between 1 st and 2 nd Quartile	<input type="checkbox"/> Between 1 st and 2 nd Quartile				
					<input type="checkbox"/> Between 2 nd and 3 rd Quartile	<input type="checkbox"/> Between 2 nd and 3 rd Quartile	<input type="checkbox"/> Between 2 nd and 3 rd Quartile				
					<input type="checkbox"/> Above 3 rd Quartile	<input type="checkbox"/> Above 3 rd Quartile	<input type="checkbox"/> Above 3 rd Quartile				

* The Total Construction Cost should equal the Construction Cost reported on line A5 of the Project Cost Chart.

** Cost per Square Foot is the construction cost divided by the square feet. Please do not include contingency costs.

13. MRI, PET, and/or Linear Accelerator

1. Describe the acquisition of any Magnetic Resonance Imaging (MRI) scanner that is adding a MRI scanner in counties with population less than 250,000 or initiation of pediatric MRI in counties with population greater than 250,000 and/or **Not Applicable**

2. Describe the acquisition of any Positron Emission Tomographer (PET) or Linear Accelerator if initiating the service by responding to the following:

A. Complete the chart below for acquired equipment. **Not Applicable**

<input type="checkbox"/> Linear Accelerator	Mev _____ Types: _____	<input type="checkbox"/> SRS <input type="checkbox"/> IMRT <input type="checkbox"/> IGRT <input type="checkbox"/> Other _____ <input type="checkbox"/> By Purchase Total Cost*: _____ <input type="checkbox"/> By Lease Expected Useful Life (yrs) _____ <input type="checkbox"/> New <input type="checkbox"/> Refurbished <input type="checkbox"/> If not new, how old? (yrs) _____
<input type="checkbox"/> MRI	Tesla: _____ Magnet: _____	<input type="checkbox"/> Breast <input type="checkbox"/> Extremity <input type="checkbox"/> Open <input type="checkbox"/> Short Bore <input type="checkbox"/> Other _____ <input type="checkbox"/> By Purchase Total Cost*: _____ <input type="checkbox"/> By Lease Expected Useful Life (yrs) _____ <input type="checkbox"/> New <input type="checkbox"/> Refurbished <input type="checkbox"/> If not new, how old? (yrs) _____
<input type="checkbox"/> PET	<input type="checkbox"/> PET only <input type="checkbox"/> PET/CT <input type="checkbox"/> PET/MRI Total Cost*: _____ <input type="checkbox"/> By Purchase <input type="checkbox"/> By Lease Expected Useful Life (yrs) _____ <input type="checkbox"/> New <input type="checkbox"/> Refurbished <input type="checkbox"/> If not new, how old? (yrs) _____	

* As defined by Agency Rule 0720-9-.01(13)

B. In the case of equipment purchase, include a quote and/or proposal from an equipment vendor. In the case of equipment lease, provide a draft lease or contract that at least includes the term of the lease and the anticipated lease payments along with the fair market value of the equipment.

Not Applicable

C. Compare lease cost of the equipment to its fair market value. Note: Per Agency Rule, the higher cost must be identified in the project cost chart. **Not Applicable**

D. Schedule of Operations: **Not Applicable**

Location	Days of Operation (Sunday through Saturday)	Hours of Operation (example: 8 am – 3 pm)
Fixed Site (Applicant)	_____	_____
Mobile Locations (Applicant)	_____	_____
(Name of Other Location)	_____	_____
(Name of Other Location)	_____	_____

E. Identify the clinical applications to be provided that apply to the project. **Not Applicable**

F. If the equipment has been approved by the FDA within the last five years provide documentation of the same. **Not Applicable**

SECTION B: GENERAL CRITERIA FOR CERTIFICATE OF NEED

In accordance with T.C.A. § 68-11-1609(b), "no Certificate of Need shall be granted unless the action proposed in the application for such Certificate is necessary to provide needed health care in the area to be served, can be economically accomplished and maintained, will provide health care that meets appropriate quality standards, and will contribute to the orderly development of health care." Further standards for guidance are provided in the State Health Plan developed pursuant to T.C.A. § 68-11-1625.

The following questions are listed according to the four criteria: (1) Need, (2) Economic Feasibility, (3) Applicable Quality Standards, and (4) Contribution to the Orderly Development of Health Care. Please respond to each question and provide underlying assumptions, data sources, and methodologies when appropriate. *Please type each question and its response on an 8 1/2" x 11" white paper, single-sided or double sided.* All exhibits and tables must be attached to the end of the application in correct sequence identifying the question(s) to which they refer, unless specified otherwise. ***If a question does not apply to your project, indicate "Not Applicable (NA)."***

QUESTIONS

SECTION B: NEED

- A. Provide a response to each criterion and standard in Certificate of Need Categories in the State Health Plan that are applicable to the proposed project. Criteria and standards can be obtained from the Tennessee Health Services and Development Agency or found on the Agency's website at <http://www.tn.gov/hsga/article/hsga-criteria-and-standards>.

The proposed project meets each criterion and standard in the State Health Plan that outlines the guidelines for growth for an ASTC, as detailed below.

1. **Need.** The minimum numbers of 884 Cases per Operating Room and 1867 Cases per Procedure Room are to be considered as baseline numbers for purposes of determining Need. An applicant should demonstrate the ability to perform a minimum of 884 Cases per Operating Room and/or 1867 Cases per Procedure Room per year, except that an applicant may provide information on its projected case types and its assumptions of estimated average time and clean up and preparation time per Case if this information differs significantly from the above-stated assumptions. It is recognized that an ASTC may provide a variety of services/Cases and that as a result the estimated average time and clean up and preparation time for such services/Cases may not meet the minimum numbers set forth herein. It is also recognized that an applicant applying for an ASTC Operating Room(s) may apply for a Procedure Room, although the anticipated utilization of that Procedure Room may not meet the base guidelines contained here. Specific reasoning and explanation for the inclusion in a CON application of such as Procedure Room must be provided. An applicant that desires to limit its Cases to a specific type or types should apply for a Specialty ASTC.

Using the guidelines provided in the Certificate of Need Standards and Criteria for Ambulatory Surgical Treatment Centers, KESC exceeds the minimum number of 884 cases per operating room, having performed 2,293 cases per OR between July 1, 2014 and June 30, 2015, the 12 month period covered in the most recent published Joint Annual Report. During the 2016 calendar year, KESC performed 2,397 cases per operating room. KESC has not achieved the minimum number of cases per procedure

room, having performed 890 over the 2015 12 month JAR period versus the standard of 1,867. In 2016, KESC performed 1,002 procedure room cases. The procedure room is used for YAG laser procedures, which is a supportive procedure needed by some patients following cataract surgery.

The 2,293 cases per OR was calculated as follows:

- Each operating room is available nine hours per day, five days per week, for a total of 250 days per year
- The total number of cases performed in KESC's four operating rooms during the 12-months from July 1, 2014 through June 30, 2015 is 9,170.
- With four operating rooms, the number of cases per operating room is 2,293.
- According to the CON Standards and Criteria, full capacity is 1,263 cases per OR per year and optimum capacity is 884 cases (70% of full capacity).
- With 2,293 cases, KESC's number of cases is 181.4% of "full" and 259% of "optimum" utilization.

If the same analysis is performed on calendar year 2016 volumes, the result is 2,397 cases per operating room. While we have managed to serve this number of patients in our current space, we are receiving patient complaints regarding the lack of space in the waiting room, and there is no capacity to grow to meet the needs of the growth in population.

An alternative way to analyze capacity is to view it based on scheduled surgery block time. With an active medical staff of 27 surgeons, all of whom have complex schedules, it is necessary to assign surgical block time to each surgeon in order to ensure orderly scheduling and maximization of OR utilization. In the current building, there are 160 surgical blocks available in a four-week period (4 ORs, 2 half-day blocks per day per OR). Currently, 158 of those 160 blocks are assigned to and utilized by a member of TVEC's medical staff. Of those surgical blocks, 138 are running at utilization rates of 70-105% of the available time. The remaining 20 blocks are running at a utilization rate of 50-69%, which is not considered absolutely full capacity, but only enables KESC to free up another 3-4 surgical blocks per month. In summary, there is a maximum of six available surgical blocks per month to enable growth, which is insufficient to meet the needs of the three additional surgeons who are expected to join KESC's medical staff next year, as well as the growth in the target population over the next several years.

2. Need and Economic Efficiencies. An applicant must estimate the projected surgical hours to be utilized per year for two years based on the types of surgeries to be performed, including the preparation time between surgeries. Detailed support for estimates must be provided.

The projection of surgical hours to be utilized per year for two years is:

Project Year 1 – 7,458 hours

Project Year 2 – 7,749 hours

These projections are based on actual surgical hours performed, including turnover times, for 2016, an estimated 3.9% increase for 2017, and then an estimated 3.9% volume increase in 2018 (Project Year 1) and again in 2019 (Project Year 2). These are conservative numbers based on a simple assumption of growth in keeping with the

population growth in the target demographic. However, it should be noted that two new surgeons will be joining the KESC medical staff in late 2017, and it is expected that these newer surgeons will perform surgery at a slower pace than the more experienced surgeons. This expected slowdown has not been reflected in the projected numbers, nor has any assumption been made that KESC's market share will change. A chart outlining the surgical hours for each subspecialty is shown below:

**Knoxville Eye Surgery Center, LLC
Hours of Surgical Time by Sub-Specialty**

	2016			2017			Project	
	Active Surgical Time	Turnover Time	Total Utilized Time	Active Surgical Time	Turnover Time	Total Utilized Time	Est. Yr 1	Est. Yr 2
Cataract	2,867	820	3,687	2,979	852	3,831	4,003	4,159
Cornea	299	86	385	311	89	400	415	431
Glaucoma	408	131	539	424	136	560	582	604
Retina	1,035	350	1,385	1,076	364	1,439	1,504	1,563
Oculoplastics	703	120	823	730	124	855	888	923
Strabismus Cases	51	10	61	52	11	63	66	68
Total Hours	5,362	1,517	6,879	5,572	1,576	7,148	7,458	7,749

3. **Need; Economic Efficiencies; Access.** To determine current utilization and need, an applicant should take into account both the availability and utilization of either: a) all existing outpatient Operating Rooms and Procedure Rooms in a Service Area, including physician office based surgery rooms (when those data are officially reported and available) OR b) all existing comparable outpatient Operating Rooms and Procedure Rooms based on the type of Cases to be performed. Additionally, applications should provide similar information on the availability of nearby out-of-state existing outpatient Operating Rooms and Procedure Rooms, if that data are available, and provide the source of that data. Unstaffed dedicated outpatient Operating Rooms and unstaffed dedicated outpatient Procedure Rooms are considered available for ambulatory surgery and are to be included in the inventory and in the measure of capacity.

In addition to KESC, the other single specialty ASTCs focused on ophthalmology within the nine-county service area are:

- ***The Eye Surgery Center of Oak Ridge, LLC***
- ***Eye Surgery Center of East Tennessee, LLC***
- ***Southeast Eye Surgery Center***

In addition, Physicians Surgery Center of Knoxville, LLC, a free-standing, multi-specialty ASTC, includes some ophthalmology procedures.

The summarized utilization statistics of other ASTCs in the primary service area providing ophthalmic surgery is shown below. Note that the State Health Plan's CON Standards and Criteria for ASTCs defines "Full Capacity" as 1,263 cases per OR per year, and "Optimum Utilization" as 884 cases per OR per year, which is 70% of "Full Capacity." For a more detailed chart, see attachment B.Need.A.3.

Facility Name	ORs	Proc Rooms	OR Cases	Cases/ OR	OR Utilization - % of Full Capacity	2015 OR Utilization - % of Optimum Utilization	Cases/Proc Room	Proc Room Utilization - % of Full Capacity	Proc Room Utilization - % of Optimum
Knoxville Eye Surgery Center, LLC									
Total Cases	4	1	9,170	2,293	181.5%	259.3%	890	33.4%	47.7%
Ophthalmology Cases	4	1	9,170	2,293	181.5%	259.3%	890	33.4%	47.7%
The Eye Surgery Center of Oak Ridge, LLC									
Total Cases	2	1	2,495	1,248	98.8%	141.1%	1,023	38.4%	54.8%
Ophthalmology Cases	2	1	2,495	1,248	98.8%	141.1%	1,023	38.4%	54.8%
Eye Surgery Center of East Tennessee, LLC									
Total Cases	2	1	2,930	1,465	116.0%	165.7%	862	32.3%	46.2%
Ophthalmology Cases	2	1	2,930	1,465	116.0%	165.7%	862	32.3%	46.2%
Physicians Surgery Center of Knoxville, LLC									
Total Cases	5	0	4,472	894	70.8%	101.2%	N/A	N/A	N/A
Ophthalmology Cases	5	0	497	99	7.9%	11.2%	N/A	N/A	N/A
Southeast Eye Surgery Center									
Total Cases	1	1	1,843	1,843	145.9%	208.5%	191	7.2%	10.2%
Ophthalmology Cases	1	1	1,843	1,843	145.9%	208.5%	191	7.2%	10.2%
Total Service Area - ASTCs performing Ophthalmology									
Total Cases	14	4	20,910	1,705	135.0%	192.9%	742	27.8%	39.7%
Ophthalmology Cases	14	4	16,935	1,422	112.5%	160.8%	742	27.8%	39.7%

4. Need and Economic Efficiencies. An applicant must document the potential impact that the proposed new ASTC would have upon the existing service providers and their referral patterns. A CON application to establish an ASTC or to expand existing services of an ASTC should not be approved unless the existing ambulatory surgical services that provide comparable services regarding the types of Cases performed, if those services are known and relevant, within the applicant's proposed Service Area or within the applicant's facility are demonstrated to be currently utilized at 70% or above.

It is not expected that the proposed project will have any impact on other existing providers. No KESC physician members perform procedures in other ASTCs within the service area, and all ASTCs providing the same type of service within the service area are well above the 70% utilization level recommended in the Standards and Criteria. It is not expected that this project will have any impact on the market share allocation between KESC and other ASTCs providing ophthalmic surgery services.

5. Need and Economic Efficiencies. An application for a Specialty ASTC should present its projections for the total number of cases based on its own calculations for the projected length of time per type of case, and shall provide any local, regional, or national data in support of its methodology. An applicant for a Specialty ASTC should provide its own definitions of the surgeries and/or procedures that will be performed and whether the Surgical Cases will be performed in an Operating Room or a Procedure Room. An applicant for a Specialty ASTC must document the potential impact that the proposed new ASTC would have upon the existing service providers and their referral patterns. A CON proposal to establish a Specialty ASTC or to expand existing services of a Specialty ASTC shall not be approved unless the existing

ambulatory surgical services that provide comparable services regarding the types of Cases performed within the applicant's proposed Service Area or within the applicant's facility are demonstrated to be currently utilized at 70% or above. An applicant that is granted a CON for a Specialty ASTC shall have the specialty or limitation placed on the CON.

As a single specialty ASTC, KESC is projecting growth in utilization proportionate to the growth in the primary service area's population over age 65, which is an estimated 3.9% per year. Reflecting this population growth rate, the future utilization projections for KESC are shown in the table below.

Knoxville Eye Surgery Center, LLC Utilization History and Projections					
Knoxville Eye Surgery Center, LLC	2015	2016	2017	Project Yr 1	Project Yr 2
Cataract	6,228	6,419	6,669	6,929	7,200
Cornea	632	679	705	733	762
Glaucoma	193	214	222	231	240
Retina	1,724	1,783	1,853	1,925	2,000
Oculoplastics	431	443	460	478	497
Strabismus Cases	49	51	53	55	57
Total OR Procedures	9,257	9,589	9,963	10,352	10,755
Procedures / OR	2,314	2,397	2,491	1,725	1,793
Laser (Procedure room)	968	1,002	1,041	1,082	1,124
Total Cases	10,225	10,591	11,004	11,433	11,879
Growth rate	3.1%	3.6%	3.9%	3.9%	3.9%

As outlined in response to question #3 above, the area ASTCs performing ophthalmic surgery are all performing above the "optimum" and "full" capacity levels as defined by the Certificate of Need Standards and Criteria.

6. Access to ASTCs. The majority of the population in a Service Area should reside within 60 minutes' average driving time to the facility.

The average drive time from all of the counties in the primary service area is 32 miles. The two farthest counties, Claiborne and Hamblen, are 57 and 59 miles from KESC, respectively.

7. Access to ASTCs. An applicant should provide information regarding the relationship of an existing or proposed ASTC site to public transportation routes if that information is available.

KESC is not located on a public transportation route, but transportation is available for patients in need of assistance through ETHRA and CAC medical transportation services.

8. Access to ASTCs. An application to establish an ambulatory surgical treatment center or to
- HF-0004 Revised 12/2016 – All forms prior to this time are obsolete. RDA 1651

expand existing services of an ambulatory surgical treatment center must project the origin of potential patients by percentage and county of residence and, if such data are readily available, by zip code, and must note where they are currently being served. Demographics of the Service Area should be included, including the anticipated provision of services to out-of-state patients, as well as the identity of other service providers both in and out of state and the source of out-of-state data. Applicants shall document all other provider alternatives available in the Service Area. All assumptions, including the specific methodology by which utilization is projected, must be clearly stated.

Patient origin has been projected based on actual patient origin by county. A chart showing the origin of KESC patients from the 2015 Joint Annual Report submitted to the State of Tennessee Department of Health is attached, as attachment B.Need.A.8. While the primary service area has been calculated to be nine counties, KESC has served patients from 47 counties in Tennessee in the past year, as well as 155 patients from other states.

For a description of the other providers in the service area, please see Section B: Need, question #3.

9. Access and Economic Efficiencies. An application to establish an ambulatory surgical treatment center or to expand existing services of an ambulatory surgical treatment center must project patient utilization for each of the first eight quarters following completion of the project. All assumptions, including the specific methodology by which utilization is projected, must be clearly stated.

KESC is projecting growth in utilization proportionate to the growth in the primary service area's population over age 65, which is an estimated 3.9% per year. Reflecting this population growth rate, the utilization projections for the first eight quarters following completion of the project are shown in the table below.

Knoxville Eye Surgery Center, LLC Utilization History and Projections												
	2016	2017	First Eight Quarters of Project									
			Qtr 1	Qtr 2	Qtr 3	Qtr 4	Yr 1	Qtr 5	Qtr 6	Qtr 7	Qtr 8	Total Yr 2
Cataract	6,419	6,669	1,559	1,732	1,732	1,906	6,929	1,620	1,800	1,800	1,980	7,200
Cornea	679	705	165	183	183	202	733	171	190	190	209	762
Glaucoma	214	222	52	58	58	64	231	54	60	60	66	240
Retina	1,783	1,853	433	481	481	529	1,925	450	500	500	550	2,000
Oculoplastics	443	460	108	120	120	132	478	112	124	124	137	497
Strabismus Cases	51	53	12	14	14	15	55	13	14	14	16	57
Total OR Procedures	9,589	9,963	2,329	2,588	2,588	2,847	10,352	2,329	2,588	2,588	2,847	10,755
Laser (Procedure room)	1,002	1,041	243	270	270	297	1,082	253	281	281	309	1,124
Total Cases	10,591	11,004	2,572	2,858	2,858	3,144	11,433	2,582	2,869	2,869	3,156	11,879
Growth rate	3.6%	3.9%					3.9%					3.9%

10. Patient Safety and Quality of Care; Health Care Workforce.

- a. An applicant should be or agree to become accredited by an accrediting organization approved by the Centers for Medicare and Medicaid Services, such as the Joint Commission, the Accreditation Association of Ambulatory Health Care, the American

Association for Accreditation of Ambulatory Surgical Facilities, or other nationally recognized accrediting organization.

KESC is accredited by the Accreditation Association of Ambulatory Health Care. The most recent three-year re-accreditation was achieved November 1, 2015.

- b. An applicant should estimate the number of physicians by specialty that are expected to utilize the facility and the criteria to be used by the facility in extending surgical and anesthesia privileges to medical personnel. An applicant should provide documentation on the availability of appropriate and qualified staff that will provide ancillary support services, whether on- or off-site.

There are currently 27 surgeons credentialed to perform surgery at KESC, all of whom practice in the specialty of ophthalmology, although many are credentialed within a subspecialty, such as retina surgery or glaucoma surgery. In addition to the surgeons, there are 19 anesthesiologists and 11 CRNAs who provide anesthesia services on a rotating basis. During business hours, there is always one anesthesiologist and one CRNA per operating room in the facility.

Three additional surgeons are expected to move to the area and become credentialed to provide surgical services at KESC by the end of 2017. In addition, American Anesthesiology of East Tennessee, the provider of anesthesia services, will continue to provide one anesthesiologist and one CRNA per operating room.

Knoxville Eye Surgery Center employs a contracted service to gather data on practitioners (physicians and certified registered nurse anesthetists - CRNA) for appointment of Medical Staff privileges. Documents included are: completed application, state license to practice, Drug Enforcement Agency license (if applicable), proof of Board Certification specific to each tract of practice, proof of malpractice insurance & claims history, criminal background check, national sex offender check, Centers for Medicare & Medicaid Sanction check, primary verification of education and training/practice, peer recommendations, proof of hospital privileges and the center's Code of Conduct which includes confidentiality, compliance, non-discrimination and conflict of interest language. Other documents may be required depending of the level of practice and center requirements such as proof of Advanced Cardiac Life Support (ACLS) certification. The Quality & Risk Manager coordinates this process with the Medical Director. Approval must be recommended by the Quality Management Committee and approved by the Board of Governors. Each member of the Medical Staff receives a letter as to the results of their application for Medical Staff privileges. Reappointment occurs every two (2) years for each member of the Medical Staff.

11. Access to ASTCs. In light of Rule 0720-11.01, which lists the factors concerning need on which an application may be evaluated, and Principle No. 2 in the State Health Plan, "Every citizen should have reasonable access to health care," the HSDA may decide to give special consideration to an applicant:

- a. Who is offering the service in a medically underserved area as designated by the United States Health Resources and Services Administration;

Each of the counties in KESC's primary service area contain medically

underserved areas, as noted on the report from the HRSA Data Warehouse report, attachment B.Need.A.11.a.

- b. Who is a "safety net hospital" or a "children's hospital" as defined by the Bureau of TennCare Essential Access Hospital payment program;

Not applicable.

- c. Who provides a written commitment of intention to contract with at least one TennCare MCO and, if providing adult services, to participate in the Medicare program;

KESC already contracts with all TennCare MCOs and fully participates in the Medicare program.

- d. Who is proposing to use the ASTC for patients that typically require longer preparation and scanning times. The applicant shall provide in its application information supporting the addition time required per Case and the impact on the need standard.

Not applicable.

- B. Describe the relationship of this project to the applicant facility's long-range development plans, if any, and how it relates to related previously approved projects of the applicant.

KESC has been providing high quality ophthalmic surgery services to the region for almost two decades. This project is the culmination of a lengthy planning process, in which KESC's Board of Governors and members reviewed various options for meeting the community need for additional ophthalmic surgery resources as the population grows and ages. While the organization has considered expanding previously, it is only now, with the constraints for block time and the high volumes that are creating challenges not only in terms of OR capacity but also in waiting room space and pre- and post-operative areas, that the organization believes that it is time to prepare for the next two decades of serving patients by moving forward with an expansion.

- C. Identify the proposed service area and justify the reasonableness of that proposed area. Submit a county level map for the Tennessee portion of the service area using the map on the following page, clearly marked to reflect the service area as it relates to meeting the requirements for CON criteria and standards that may apply to the project. Please include a discussion of the inclusion of counties in the border states, if applicable. ***Attachment Section B.Need.C(1)***

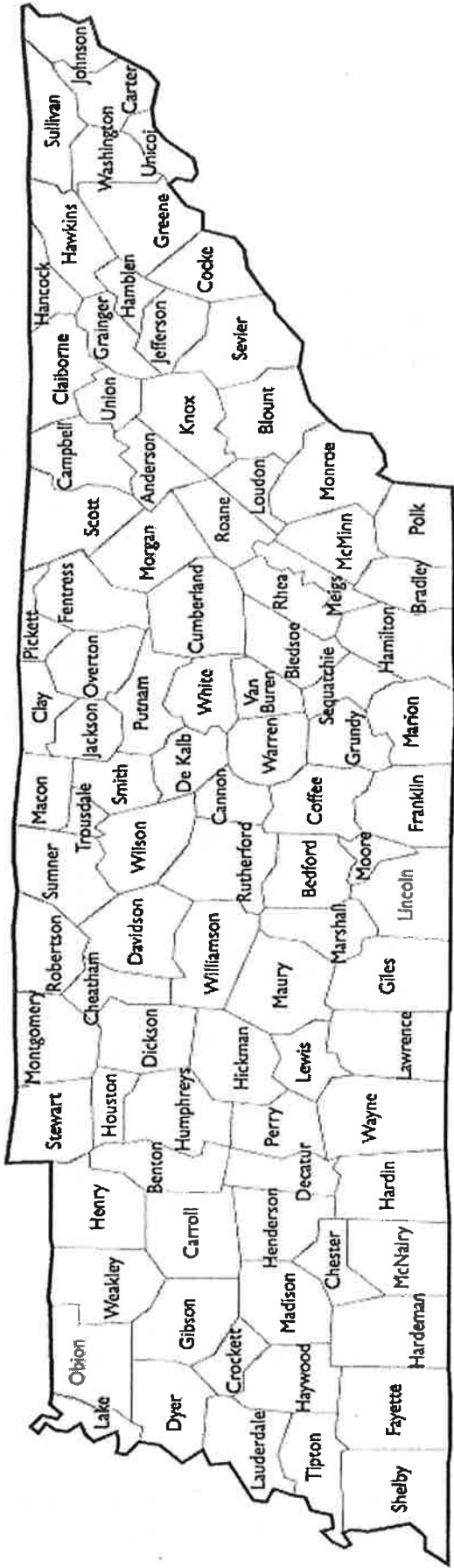
With almost 18 years of history serving the people of this area, KESC's nine-county primary service area is based on the origin of our patients. 86% of KESC's patients live in Knox, Blount, Sevier, Loudon, Campbell, Anderson, Jefferson, Claiborne and Hamblen counties. See the attached chart, attachment B.Need.C(1) for a detailed breakdown of KESC's historic utilization and patient county of origin.

Please complete the following tables, if applicable: ***See attached chart, attachment B.Need.C(2)***

Service Area Counties	Historical Utilization-County Residents	% of total procedures
County #1		
County #2		
Etc.		
Total		100%

Service Area Counties	Projected Utilization-County Residents	% of total procedures
County #1		
County #2		
Etc.		
Total		100%

County Level Map



- D. 1). a) Describe the demographics of the population to be served by the proposal.

The population in KESC's nine-county primary service area is growing at an estimated 1.1% per year, which is faster than the growth rate for the state of Tennessee. Growth in KESC's target population, which is anyone aged 65+, is growing even faster, at an estimated 3.9% per year. While people of all ages can need ophthalmic surgery, the overwhelming majority are over the age of 65, and the age 65+ population in the service area is estimated to grow by almost 30,000 people between 2016 and 2020.

The median household income in the service area is below the median income for the state of Tennessee (\$42,244 versus \$45,219), but the percentage of people living below the poverty level is below that of the state (16.6% versus 17.6%), as is the percentage of people enrolled in TennCare (20.4% versus 23.0%).

- b) Using current and projected population data from the Department of Health, the most recent enrollee data from the Bureau of TennCare, and demographic information from the US Census Bureau, complete the following table and include data for each county in your proposed service area.

See attachment D.1.b.

Projected Population Data: <http://www.tn.gov/health/article/statistics-population>

TennCare Enrollment Data: <http://www.tn.gov/tenncare/topic/enrollment-data>

Census Bureau Fact Finder: <http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml>

Demographic Variable/Geographic Area	Department of Health/Health Statistics							Bureau of the Census				TennCare	
	Total Population-Current Year	Total Population-Projected Year	Total Population-% Change	*Target Population-Current Year	*Target Population-Project Year	*Target Population-% Change	Target Population Projected Year as % of Total	Median Age	Median Household Income	Person Below Poverty Level	Person Below Poverty Level as % of Total	TennCare Enrollees	TennCare Enrollees as % of Total Population
County A													
County B, etc.													
Service Area Total													
State of TN Total													

* Target Population is population that project will primarily serve. For example, nursing home, home health agency, hospice agency projects typically primarily serve the Age 65+ population; projects for child and adolescent psychiatric services will serve the Population Ages 0-19. Projected Year is defined in select service-specific criteria and standards. If Projected Year is not defined, default should be four years from current year, e.g., if Current Year is 2016, then default Projected Year is 2020.

- 2) Describe the special needs of the service area population, including health disparities, the accessibility to consumers, particularly the elderly, women, racial and ethnic minorities, and low-income groups. Document how the business plans of the facility will take into

consideration the special needs of the service area population.

In terms of ophthalmic surgery, the primary demographic issue is the aging of the population. As mentioned previously, the portion of the population aged 65+ is growing at a rate almost four times that of the general population (3.9% per year versus 1.1% per year). People of all races and genders experience a far higher utilization rate for ophthalmic surgery than people under the age of 65. A recent study by the National Bureau of Economic Research found that the availability and accessibility of cataract surgery is a major contributing factor in senior citizens living longer, healthier lives. Expanding the applicant's operating room capacity will enable KESC to help meet the needs of this expanding part of the population.

Since its opening in 1999, KESC has provided care to people of all races, genders, and income levels. We accept all TennCare plans, as well as Kentucky Medicaid. KESC provides charity care for patients needing assistance and also participates in other need-based programs, such as Interfaith Health Clinic and Knoxville Area Project Access, which help patients without traditional insurance.

- E. Describe the existing and approved but unimplemented services of similar healthcare providers in the service area. Include utilization and/or occupancy trends for each of the most recent three years of data available for this type of project. List each provider and its utilization and/or occupancy individually. Inpatient bed projects must include the following data: Admissions or discharges, patient days, average length of stay, and occupancy. Other projects should use the most appropriate measures, e.g., cases, procedures, visits, admissions, etc. This doesn't apply to projects that are solely relocating a service.

There are no approved but unimplemented services of similar healthcare providers in the service area, but there is a pending application (CN1611-038) for a new two-OR ASTC specializing in ophthalmic surgery. It is scheduled for a hearing during the February meeting of the Tennessee Health Services and Development Agency.

The existing providers offering similar services in the service area are:

- ***The Eye Surgery Center of Oak Ridge, LLC***
- ***Eye Surgery Center of East Tennessee, LLC***
- ***Physicians Surgery Center of Knoxville, LLC***
- ***Southeast Eye Surgery Center***

A chart outlining the utilization statistics for the past three years for each of these providers is attached, as attachment B.Need.E. In summary, the most recent 12-month utilization statistics for each, as reported in the Joint Annual Reports submitted for July 1, 2014 – June 30, 2015, are:

- ***The Eye Surgery Center of Oak Ridge, LLC – 3,518 cases (1,248 per OR, 1,023 per procedure room)***
- ***Eye Surgery Center of East Tennessee, LLC – 3,792 cases (1,465 per OR, 862 per procedure room)***
- ***Physicians Surgery Center of Knoxville, LLC – 4,472 cases (894 per OR, no procedure rooms). Note that this is a multi-specialty facility. 497 of the cases were ophthalmology cases.***
- ***Southeast Eye Surgery Center – 2,034 cases (1,843 per OR, 191 per procedure room)***

As noted on the chart, at these volumes, the utilization rate for each exceeds the "optimum" number of cases per operating room, as defined by the ASTC Standards and Criteria. The percentage of optimum volume achieved by each for the twelve-month period is:

- **The Eye Surgery Center of Oak Ridge, LLC – 141.1%**
- **Eye Surgery Center of East Tennessee, LLC – 165.7%**
- **Physicians Surgery Center of Knoxville, LLC – 101.2% (multi-specialty facility)**
- **Southeast Eye Surgery Center, LLC – 208.5%**

Even if the two operating rooms proposed in the pending application for an additional ophthalmic surgery ASTC (CN1611-038) are approved, as well as the two additional operating rooms proposed in this application, the ASTCs providing this service in the service area will still be functioning over the “optimum capacity” for ASTCs.

- F. Provide applicable utilization and/or occupancy statistics for your institution for each of the past three years and the projected annual utilization for each of the two years following completion of the project. Additionally, provide the details regarding the methodology used to project utilization. The methodology must include detailed calculations or documentation from referral sources, and identification of all assumptions.

During the calendar year of 2016, KESC performed 10,591 cases, with 9,589 cases being performed in the operating rooms and 1,002 performed in the procedure room. In 2017, growth of 3.9% has been projected, reflecting the growth rate in the population over the age of 65, which is KESC’s target population. If the project is approved, the first year the replacement ASTC will be in service is 2018, for which 3.9% growth has been projected, again based solely on population growth for our target population. No additional growth has been anticipated, as the capacity requested is simply needed to enable KESC to serve its current share of the market, not to take market share from other providers.

A chart outlining detailed historic and projected utilization statistics is shown below:

Knoxville Eye Surgery Center, LLC Utilization History and Projections						
	Actual Case Volume for Calendar Year			Estimated	Estimated	Estimated
Knoxville Eye Surgery Center, LLC	2014	2015	2016	2017	Project Yr 1	Project Yr 2
Cataract	6,079	6,228	6,419	6,669	6,929	7,200
Cornea	583	632	679	705	733	762
Glaucoma	188	193	214	222	231	240
Retina	1,701	1,724	1,783	1,853	1,925	2,000
Oculoplastics	436	431	443	460	478	497
Strabismus Cases	48	49	51	53	55	57
Total OR Procedures	9,035	9,257	9,589	9,963	10,352	10,755
Procedures / OR	2,259	2,314	2,397	2,491	1,725	1,793
# of ORs	4	4	4	4	6	6
Laser (Procedure room)	879	968	1,002	1,041	1,082	1,124
Total Cases	9,914	10,225	10,591	11,004	11,433	11,879
Growth rate		3.1%	3.6%	3.9%	3.9%	3.9%

Even in the first two years of the project, with two additional operating rooms, KESC volumes remain above the optimum capacity as defined by the ASTC Standards and Criteria.

SECTION B: ECONOMIC FEASIBILITY

A. Provide the cost of the project by completing the Project Costs Chart on the following page. Justify the cost of the project.

- 1) All projects should have a project cost of at least \$15,000 (the minimum CON Filing Fee). (See Application Instructions for Filing Fee).

The filing fee has been calculated and is \$40,383.79. A check for the fee is attached to the application. The total project cost is estimated to be \$7,063,651.

- 2) The cost of any lease (building, land, and/or equipment) should be based on fair market value or the total amount of the lease payments over the initial term of the lease, whichever is greater. Note: This applies to all equipment leases including by procedure or "per click" arrangements. The methodology used to determine the total lease cost for a "per click" arrangement must include, at a minimum, the projected procedures, the "per click" rate and the term of the lease.

The building will be wholly owned by KESC, and no equipment will be leased.

- 3) The cost for fixed and moveable equipment includes, but is not necessarily limited to, maintenance agreements covering the expected useful life of the equipment; federal, state, and local taxes and other government assessments; and installation charges, excluding capital expenditures for physical plant renovation or in-wall shielding, which should be included under construction costs or incorporated in a facility lease.

KESC has been performing ophthalmic surgery since 1999, and as such, has much of the equipment that will be needed for the replacement center. Because two operating rooms will be added, along with additional pre-and post-operative bays, particular equipment is needed, such as operating room lights, two additional microscopes, additional stretchers, and additional patient monitors. A list of fixed and moveable equipment that will be purchased is attached as attachment B.Economic Feasibility.3.

- 4) Complete the Square Footage Chart on page 8 and provide the documentation. Please note the Total Construction Cost reported on line 5 of the Project Cost Chart should equal the Total Construction Cost reported on the Square Footage Chart.

The Square Footage Chart is complete.

- 5) For projects that include new construction, modification, and/or renovation—**documentation must be** provided from a licensed architect or construction professional that support the estimated construction costs. Provide a letter that includes the following:
 - a) A general description of the project;
 - b) An estimate of the cost to construct the project;
 - c) A description of the status of the site's suitability for the proposed project; and
 - d) Attesting the physical environment will conform to applicable federal standards,

~~manufacturer's specifications and licensing agencies' requirements including the AIA Guidelines for Design and Construction of Hospital and Health Care Facilities in current use by the licensing authority.~~

An overall cost letter from the project development consultant, Anchor Health Properties, is attached, as well as a letter from the project architect. Both are attached as attachment B.Economic Feasibility.5.

PROJECT COST CHART

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A. Construction and equipment acquired by purchase:

1. Architectural and Engineering Fees	\$ 371,518
2. Legal, Administrative (Excluding CON Filing Fee), Consultant Fees	\$ 283,287
3. Acquisition of Site	\$ -
4. Preparation of Site	\$ 677,783
5. Total Construction Costs	\$ 3,890,826
6. Contingency Fund	\$ 224,555
7. Fixed Equipment (Not included in Construction Contract)	\$ 650,814
8. Moveable Equipment (List all equipment over \$50,000 as separate attachments)	\$ 604,484
9. Other (Specify) _____	\$ -

B. Acquisition by gift, donation, or lease:

1. Facility (inclusive of building and land)	\$ -
2. Building only	\$ -
3. Land only	\$ -
4. Equipment (Specify) _____	\$ -
5. Other (Specify) _____	\$ -

C. Financing Costs and Fees:

1. Interim Financing	\$ 160,000
2. Underwriting Costs	\$ -
3. Reserve for One Year's Debt Service	\$ 160,000
4. Other (Specify) _____	\$ -

D. Estimated Project Cost (A+B+C)

\$ 6,208,431

E. CON Filing Fee

\$ 40,384

F. Total Estimated Project Cost (D+E)

TOTAL

\$ 7,063,651

B. Identify the funding sources for this project.

Check the applicable item(s) below and briefly summarize how the project will be financed. ***(Documentation for the type of funding MUST be inserted at the end of the application, in the correct alpha/numeric order and identified as Attachment Section B.Economic Feasibility.B.)***

- ☒ 1) Commercial loan – Letter from lending institution or guarantor stating favorable initial contact, proposed loan amount, expected interest rates, anticipated term of the loan, and any restrictions or conditions;
- ☐ 2) Tax-exempt bonds – Copy of preliminary resolution or a letter from the issuing authority stating favorable initial contact and a conditional agreement from an underwriter or investment banker to proceed with the issuance;
- ☐ 3) General obligation bonds – Copy of resolution from issuing authority or minutes from the appropriate meeting;
- ☐ 4) Grants – Notification of intent form for grant application or notice of grant award;
- ☐ 5) Cash Reserves – Appropriate documentation from Chief Financial Officer of the organization providing the funding for the project and audited financial statements of the organization; and/or
- ☐ 6) Other – Identify and document funding from all other sources.

C. Complete Historical Data Charts on the following two pages—**Do not modify the Charts provided or submit Chart substitutions!**

Historical Data Chart represents revenue and expense information for the last *three (3)* years for which complete data is available. Provide a Chart for the total facility and Chart just for the services being presented in the proposed project, if applicable. **Only complete one chart if it suffices.**

Note that "Management Fees to Affiliates" should include management fees paid by agreement to the parent company, another subsidiary of the parent company, or a third party with common ownership as the applicant entity. "Management Fees to Non-Affiliates" should include any management fees paid by agreement to third party entities not having common ownership with the applicant.

HISTORICAL DATA CHART

☒ Total Facility
☐ Project Only

Give information for the last three (3) years for which complete data are available for the facility or agency. The fiscal year begins in January (Month).

	Year 2014	Year 2015	Year 2016
A. Utilization Data (Specify unit of measure, e.g. 1,000 patient days, 500 visits)	<u>9,914 cases</u>	<u>10,225 cases</u>	<u>10,551 cases</u>
B. Revenue from Services to Patients			
1. Inpatient Services	\$ -	\$ -	\$ -
2. Outpatient Services	27,647,585	28,609,210	29,231,072
3. Emergency Services	-	-	-
4. Other Operating Revenue (Rental & Optical Ctr)	<u>838,039</u>	<u>898,909</u>	<u>906,121</u>
Gross Operating Revenue	\$ 28,485,624	\$ 29,508,119	\$ 30,137,193
C. Deductions from Gross Operating Revenue			
1. Contractual Adjustments	\$ 16,987,816	\$ 17,451,618	\$ 17,724,822
2. Provision for Charity Care	125,136	194,125	193,984
3. Provision for Bad Debt	<u>210,759</u>	<u>172,719</u>	<u>138,319</u>
Total Deductions	\$ 17,323,711	\$ 17,818,462	\$ 18,057,125
NET OPERATING REVENUE	\$ 11,161,913	\$ 11,689,657	\$ 12,080,068
D. Operating Expenses			
1. Salaries and Wages			
a. Direct Patient Care	1,803,846	1,875,005	1,933,282
b. Non-Patient Care	676,496	778,573	803,550
2. Physician's Salaries and Wages	25,000	25,000	25,000
3. Supplies	3,458,329	4,119,427	3,848,539
4. Rent			
a. Paid to Affiliates	-	-	-
b. Paid to Non-Affiliates	28,741	28,741	22,700
5. Management Fees:			
a. Paid to Affiliates	-	-	-
b. Paid to Non-Affiliates	-	-	-
6. Other Operating Expenses	<u>1,243,035</u>	<u>1,416,821</u>	<u>1,344,535</u>
Total Operating Expenses	\$ 7,235,447	\$ 8,243,567	\$ 7,977,606
E. Earnings Before Interest, Taxes and Depreciation	\$ 3,926,466	\$ 3,446,090	\$ 4,102,462
F. Non-Operating Expenses			
1. Taxes	\$ 272,969	\$ 287,668	\$ 284,119
2. Depreciation	229,052	228,169	246,236
3. Interest	41,860	36,752	40,775
4. Other Non-Operating Expenses	<u>675,315</u>	<u>700,950</u>	<u>674,471</u>
Total Non-Operating Expenses	\$ 1,219,196	\$ 1,253,539	\$ 1,245,601
NET INCOME (LOSS)	\$ 2,707,270	\$ 2,192,551	\$ 2,856,861

Chart Continues Onto Next Page

NET INCOME (LOSS)	\$ 2,707,270	\$ 2,192,551	\$ 2,856,861
G. Other Deductions			
1. Annual Principal Debt Repayment	\$ 272,534	\$ 281,053	\$ 178,885
2. Annual Capital Expenditure	\$ 36,947	\$ 21,775	\$ 372,325
Total Other Deductions	\$ -	\$ -	\$ -
NET BALANCE	\$ 2,397,789	\$ 1,889,723	\$ 2,305,651
DEPRECIATION	229,052	228,169	246,236
FREE CASH FLOW (Net Balance + Depreciation)	\$ 2,626,841	\$ 2,117,892	\$ 2,551,887

☒ Total Facility

☐ Project Only

HISTORICAL DATA CHART - OTHER EXPENSES

OTHER EXPENSES CATEGORIES

	Year 2014	Year 2015	Year 2016
1. Bank Charges	\$ 20,334	\$ 24,303	\$ 32,075
2. IT Expense	55,048	47,823	62,430
3. Employee Recognition	35,002	25,296	45,718
4. Contract Wages	53,318	150,202	103,922
5. Dues and Subscriptions	22,628	37,614	11,671
6. Insurance	198,196	217,163	233,009
7. Laundry and Uniforms	89,284	85,580	91,058
8. Other Employee Benefits	232,708	242,649	247,271
9. Office Supplies and Postage	82,543	98,840	91,159
10. Repairs and Maintenance	344,863	394,586	322,590
11. Telephone and Utilities	120,539	119,207	121,019
12. Professional Fees	67,127	68,831	63,514
13. Other	(78,555)	(95,273)	(80,901)
Total Other Expenses	\$ 1,243,035	\$ 1,416,821	\$ 1,344,535

A. Complete Projected Data Charts on the following two pages – Do not modify the Charts provided or submit Chart substitutions!

The Projected Data Chart requests information for the two years following the completion of the proposed services that apply to the project. Please complete two Projected Data Charts. One Projected Data Chart should reflect revenue and expense projections for the **Proposal Only** (i.e., if the application is for additional beds, include anticipated revenue from the proposed beds only, not from all beds in the facility). The second Chart should reflect information for the total facility. **Only complete one chart if it suffices.**

Note that "Management Fees to Affiliates" should include management fees paid by agreement to the parent company, another subsidiary of the parent company, or a third party with common ownership as the applicant entity. "Management Fees to Non-Affiliates" should include any management fees paid by agreement to third party entities not having common ownership with the applicant.

PROJECTED DATA CHART

☒ Total Facility
☐ Project Only

Give information for the two (2) years following the completion of this proposal. The fiscal year begins in January (Month).

	Year 1	Year 2
A. Utilization Data (Cases)	<u>11,433</u>	<u>11,879</u>
B. Revenue from Services to Patients		
1. Inpatient Services	\$ -	\$ -
2. Outpatient Services	31,511,096	32,740,028
3. Emergency Services	-	-
4. Other Operating Revenue (Rental & Optical Ctr)	<u>1,427,209</u>	<u>1,454,210</u>
Gross Operating Revenue		
	\$ 32,938,305	\$ 34,194,238
C. Deductions from Gross Operating Revenue		
1. Contractual Adjustments	\$ 19,410,835	\$ 20,167,857
2. Provision for Charity Care	220,578	229,180
3. Provision for Bad Debt	<u>157,555</u>	<u>163,700</u>
Total Deductions		
	\$ 19,788,968	\$ 20,560,738
NET OPERATING REVENUE	\$ 13,149,337	\$ 13,633,500
D. Operating Expenses		
1. Salaries and Wages		
a. Direct Patient Care	2,468,282	2,542,330
b. Non-Patient Care	846,376	863,304
2. Physician's Salaries and Wages	25,000	25,000
3. Supplies	4,150,179	4,312,077
4. Rent		
a. Paid to Affiliates	-	-
b. Paid to Non-Affiliates	22,700	22,700
5. Management Fees:		
a. Paid to Affiliates	-	-
b. Paid to Non-Affiliates	-	-
6. Other Operating Expenses	<u>1,237,672</u>	<u>1,263,563</u>
Total Operating Expenses	\$ 8,750,209	\$ 9,028,974
E. Earnings Before Interest, Taxes and Depreciation	\$ 4,399,128	\$ 4,604,527
F. Non-Operating Expenses		
1. Taxes	\$ 306,280	\$ 318,225
2. Depreciation	480,430	541,840
3. Interest	207,563	202,125
4. Other Non-Operating Expenses	<u>1,153,216</u>	<u>1,161,897</u>
Total Non-Operating Expenses	\$ 2,147,489	\$ 2,224,087
NET INCOME (LOSS)	\$ 2,251,639	\$ 2,380,440

Chart Continues Onto Next Page

NET INCOME (LOSS)	<u>\$ 2,414,770</u>	<u>\$ 2,532,763</u>
G. Other Deductions		
1. Annual Principal Debt Repayment	<u>\$ 267,171</u>	<u>\$ 272,609</u>
2. Annual Capital Expenditure	<u>\$ 35,000</u>	<u>\$ 35,000</u>
Total Other Deductions	<u>\$ -</u>	<u>\$ -</u>
NET BALANCE	<u>\$ 2,112,599</u>	<u>\$ 2,225,154</u>
DEPRECIATION	<u>480,430</u>	<u>541,840</u>
FREE CASH FLOW (Net Balance + Depreciation)	<u>\$ 2,593,029</u>	<u>\$ 2,766,994</u>

☒ Total Facility

☐ Project Only

PROJECTED DATA CHART - OTHER EXPENSES

OTHER EXPENSES CATEGORIES

	Project Yr 1	Project Yr 1
1. Bank Charges	\$ 38,000	\$ 38,000
2. IT Expense	\$ 100,000	\$ 103,000
3. Employee Recognition	\$ 35,000	\$ 36,050
4. Contract Wages	\$ 115,000	\$ 118,450
5. Dues and Subscriptions	\$ 18,000	\$ 15,000
6. Insurance	\$ 250,000	\$ 257,500
7. Laundry and Uniforms	\$ 95,000	\$ 97,850
8. Other Employee Benefits	\$ 255,000	\$ 262,330
9. Office Supplies and Postage	\$ 95,000	\$ 96,711
10. Repairs and Maintenance	\$ 100,000	\$ 100,000
11. Telephone and Utilities	\$ 150,000	\$ 154,500
12. Professional Fees	\$ 70,000	\$ 70,000
13. Other	\$ (83,328)	\$ (85,828)
Total Other Expenses	\$ 1,237,672	\$ 1,263,563

- ☐ 1) Please identify the project's average gross charge, average deduction from operating revenue, and average net charge using information from the Projected Data Chart for Year 1 and Year 2 of the proposed project. Please complete the following table.

	Previous Year	Current Year	Year One	Year Two	% Change (Current Year to Year 2)
Gross Charge (<i>Gross Operating Revenue/Utilization Data</i>)	\$ 2,519	\$ 2,422	\$ 2,422	\$2,422	0%
Deduction from Revenue (<i>Total Deductions/Utilization Data</i>)	\$ 1,565	\$ 1,471	\$ 1,471	\$ 1,471	0%
Average Net Charge (<i>Net Operating Revenue/Utilization Data</i>)	\$ 954	\$ 951	\$ 951	\$ 951	0%

- 2) Provide the proposed charges for the project and discuss any adjustment to current charges that will result from the implementation of the proposal. Additionally, describe the anticipated revenue from the project and the impact on existing patient charges.

It is not anticipated that there will be an adjustment to charges as a result of the proposal. The additional revenue from the project is a product of the net charge per case multiplied by the growth in volume. There will be no financial impact of this project to patients. No payer contracts will change, self-pay rates will not be impacted by this project, and KESC's commitment to care for patients on TennCare or through charity care will continue.

- 3) Compare the proposed charges to those of similar facilities in the service area/adjoining service areas, or to proposed charges of projects recently approved by the Health Services and Development Agency. If applicable, compare the proposed charges of the project to the current Medicare allowable fee schedule by common procedure terminology (CPT) code(s).

See the attached table, attachment B.Economic Feasibility.E.3, comparing KESC's gross charges to the current Medicare allowable fee schedule for the top 20 CPT codes performed. Detailed charges by CPT code for similar facilities are not readily available, but overall gross and net charges per case are similar across all single-specialty ophthalmology ASTCs in the primary service area. When comparing gross and net charges across all providers, it should be noted that KESC is the only ophthalmology ASTC offering cataract, glaucoma, plastics, cornea, retinal, and strabismus surgery. A chart showing the gross and net charges per case for each ophthalmology ASTC in the service area is shown below, based on data gathered from the most recent two Joint Annual Reports.

Attachment B-Economic Feasibility.E.3

Comparison of Average Gross Charges, Deductions from Charges, and Net Charges

Data Source - 2014 and 2015 Joint Annual Reports

Knoxville Eye Surgery Center (Applicant)	2015 JAR	Per Case	2014 JAR	Per Case
Number of Cases	10,060		9,626	
Average Gross Charge	\$ 28,199,293	\$ 2,803	\$ 26,691,919	\$ 2,773
Average Deduction from Revenue	\$ 17,859,151	\$ 1,775	\$ 16,943,260	\$ 1,760
Average Net Charge	\$ 10,340,142	\$ 1,028	\$ 9,748,659	\$ 1,013
The Eye Surgery Center of Oak Ridge	2015 JAR	Per Case	2014 JAR	Per Case
Number of Cases	3,518		3,302	
Average Gross Charge	\$ 4,269,068	\$ 1,213	\$ 4,504,876	\$ 1,364
Average Deduction from Revenue	\$ 1,642,312	\$ 467	\$ 1,655,279	\$ 501
Average Net Charge	\$ 2,626,756	\$ 747	\$ 2,849,597	\$ 863
Eye Surgery Center of E. TN	2015 JAR	Per Case	2014 JAR	Per Case
Number of Cases	3,792		3,895	
Average Gross Charge	\$ 13,162,772	\$ 3,471	\$ 13,944,314	\$ 3,580
Average Deduction from Revenue	\$ 9,159,575	\$ 2,415	\$ 10,497,017	\$ 2,695
Average Net Charge	\$ 4,003,197	\$ 1,056	\$ 3,447,297	\$ 885
Southeast Eye Surgery Center				
Number of Cases	2,034		687	
Average Gross Charge	\$ 7,957,668	\$ 3,912	\$ 2,575,605	\$ 3,749
Average Deduction from Revenue	\$ 5,722,748	\$ 2,814	\$ 1,579,400	\$ 2,299
Average Net Charge	\$ 2,234,920	\$ 1,099	\$ 996,205	\$ 1,450

- B.** 1) Discuss how projected utilization rates will be sufficient to support the financial performance. Indicate when the project's financial breakeven is expected and demonstrate the availability of sufficient cash flow until financial viability is achieved. Provide copies of the balance sheet and income statement from the most recent reporting period of the institution and the most recent audited financial statements with accompanying notes, if applicable. For all projects, provide financial information for the corporation, partnership, or principal parties that will be a source of funding for the project. Copies must be inserted at the end of the application, in the correct alpha-numeric order and labeled as **Attachment Section B-Economic Feasibility-F1**. **NOTE: Publicly held entities only need to reference their SEC filings.**

As evidenced by the historical and projected data charts, KESC is a financially viable, stable and long-term business that is positioned to successfully reinvest in the business to build capacity. While there is some impact to net income and cash flow over the first two years of the project due to the additional debt load, the impact to profitability is minimal, and at no time does the business sustain a loss.

A copy of the balance sheet and income statement for 2016 is attached as attachment B.Economic Feasibility.F1. Given the size of the organization, KESC is not required to have financial statements audited, but the attached have been compiled and reviewed by Novinger, Ball & Zivi, PC, a third-party CPA firm.

- 2) Net Operating Margin Ratio – Demonstrates how much revenue is left over after all the variable or operating costs have been paid. The formula for this ratio is: (Earnings before interest, Taxes, and Depreciation/Net Operating Revenue).

Utilizing information from the Historical and Projected Data Charts please report the net operating margin ratio trends in the following table:

Year	2nd Year previous to Current Year	1st Year previous to Current Year	Current Year	Projected Year 1	Projected Year 2
Net Operating Margin Ratio	35.2%	29.5%	33.9%	33.4%	33.7%

3) Capitalization Ratio (Long-term debt to capitalization) – Measures the proportion of debt financing in a business's permanent (Long-term) financing mix. This ratio best measures a business's true capital structure because it is not affected by short-term financing decisions. The formula for this ratio is: (Long-term debt/(Long-term debt+Total Equity (Net assets)) x 100).

For the entity (applicant and/or parent company) that is funding the proposed project please provide the capitalization ratio using the most recent year available from the funding entity's audited balance sheet, if applicable. The Capitalization Ratios are not expected from outside the company lenders that provide funding.

Using the year-end financial statement for 2016, KESC's capitalization ratio is 8.62%. This was calculated by taking the total long-term debt, \$511,048, divided by the equity (\$5,416,468) + the long term debt, multiplied by 100.

- C. Discuss the project's participation in state and federal revenue programs including a description of the extent to which Medicare, TennCare/Medicaid and medically indigent patients will be served by the project. Additionally, report the estimated gross operating revenue dollar amount and percentage of projected gross operating revenue anticipated by payor classification for the first year of the project by completing the table below.

Applicant's Projected Payor Mix, Year 1

Payor Source	Projected Gross Operating Revenue	As a % of total
Medicare/Medicare Managed Care	\$22,209,578	70.5%
TennCare/Medicaid	\$369,548	1.2%
Commercial/Other Managed Care	\$7,687,780	24.4%
Self-Pay	\$464,759	1.5%
Charity Care	\$220,578	0.7%
Other (Workers Comp, Health Dept)	\$558,853	1.7%
Total	\$31,511,096	100%

- D. Provide the projected staffing for the project in Year 1 and compare to the current staffing for the most recent 12-month period, as appropriate. This can be reported using full-time equivalent (FTEs) positions for these positions. Additionally, please identify projected salary amounts by position classifications and compare the clinical staff salaries to prevailing wage patterns in the proposed service area as published by the Department of Labor & Workforce Development and/or other documented sources.

Position Classification	Existing FTEs (2016)	Projected FTEs Year 1	Average Wage (Contractual Rate)	Area Wide/Statewide Average Wage
a) Direct Patient Care Positions				
<i>RN</i>	19.0	23.0	\$27.23/hr	\$27.32/hr
<i>Surgical Technicians</i>	9.0	12.0	\$17.97/hr	\$18.33/hr
<i>Nursing Aide</i>	4.0	5.0	\$12.27/hr	\$10.76/hr
Total Direct Patient Care Positions	32.0	39.0		
b) Non-Patient Care Positions				
<i>Administrator</i>	1.0	1.0		Not available
<i>Reception/Scheduling</i>	3.0	3.5	\$13.95/hr	\$12.51/hr
<i>Financial (Billing/AR/Acctg)</i>	6.0	6.0	\$16.89/hr	\$15.13/hr
<i>Medical Records</i>	1.0	1.0	\$19.86/hr	\$15.35/hr
Total Non-Patient Care Positions	11.0	11.5		
Total Employees (A+B)	43.0	50.5		
c) Contractual Staff	0.2	0.2		
Total Staff (a+b+c)	43.2	51.7		

E. Describe all alternatives to this project which were considered and discuss the advantages and disadvantages of each alternative including but not limited to:

- 1) Discuss the availability of less costly, more effective and/or more efficient alternative methods of providing the benefits intended by the proposal. If development of such alternatives is not practicable, justify why not, including reasons as to why they were rejected.

KESC's Board of Governors and Members have spent over a year evaluating various options to ease the space constraints under which we are operating and to provide capacity to meet the needs of the growing 65+ population. Various scenarios were evaluated, including attempting to extend hours and adding on to the existing facility.

While adding hours would provide some capacity for additional surgeries, it does not address KESC's fundamental capacity issues. First, there is a limit to surgeons', anesthesia providers', and patients' willingness to have surgery late in the evening. While we can expand hours to a limited degree, it is not an adequate long-term solution to meeting the needs of the growing target population over time. Second, adding some evening hours does not address the opportunity to enable the faster cataract surgeons to expand their surgical capacity without adding additional hours of surgery, by utilizing two operating rooms, thereby eliminating the waiting period between cases for room turnover. Third, new surgeons joining KESC's medical staff need routine and stable surgical block time, which cannot be provided simply by adding evening hours.

Consideration was given to expanding the current building. However, after sketching out both the expansion and replacement options as well as obtaining budgetary pricing from a contractor, it was determined that the minimal cost difference between expansion of the existing building and building a new, replacement ASTC would be more than offset by the disruption to operations during the construction period, as well as the downtime that would be required to redo mechanical systems. In addition, the current facility's HVAC systems are

extremely inefficient, provide no back-up in case of a system failure, and drive unreasonably high utility costs.

- 2) Document that consideration has been given to alternatives to new construction, e.g., modernization or sharing arrangements.

Consideration has been given to alternatives to building, but KESC is already under such capacity constraints that alternatives, such as extending operating hours, do not provide enough relief long-term (see question 1 above).

SECTION B: CONTRIBUTION TO THE ORDERLY DEVELOPMENT OF HEALTH CARE

- A. List all existing health care providers (i.e., hospitals, nursing homes, home care organizations, etc.), managed care organizations, alliances, and/or networks with which the applicant currently has or plans to have contractual and/or working relationships, that may directly or indirectly apply to the project, such as, transfer agreements, contractual agreements for health services.

**Parkwest Medical Center
American Anesthesiology of E. TN
David G. Gerkin, MD (Medical Director)
Valley Biomedical
Blue Cross Blue Shield of TN
Cigna
Novation Purchasing Group**

**University of Tennessee Medical Center
Tara Moore, PharmD (Pharmacy Consultant)
Knoxville Dermatopathology
Lincoln Memorial University
United Healthcare
Aetna**

- B. Describe the effects of competition and/or duplication of the proposal on the health care system, including the impact to consumers and existing providers in the service area. Discuss any instances of competition and/or duplication arising from your proposal including a description of the effect the proposal will have on the utilization rates of existing providers in the service area of the project.

1) Positive Effects

Because KESC offers a broad range of ophthalmology surgical services, expanding capacity enables patients needing those services to receive them timely and in the most efficient and up-to-date setting. As the target population grows, volumes will grow for all providers of ophthalmology surgery in the service area. Many of those ophthalmologists refer patients to members of KESC's medical staff for complex issues, such as cornea, glaucoma, or retina surgery. KESC needs to have the capacity to meet the needs of those patients and referring physicians.

2) Negative Effects

As stated previously, this project is not expected to have a negative impact on other providers in the area. No shift in market share is anticipated.

- C. 1) Discuss the availability of and accessibility to human resources required by the proposal, including clinical leadership and adequate professional staff, as per the State of Tennessee licensing requirements and/or requirements of accrediting agencies, such as the Joint Commission and Commission on Accreditation of Rehabilitation Facilities.

KESC is fully staffed with qualified healthcare professionals, including registered nurses, certified surgical technicians, and certified nursing assistants. Clinical leadership is already in place and will not require expansion. All OR Circulating nurses and Pre/Post-Operative nurses are licensed, registered nurses. Staff members' qualifications and licenses have been reviewed and approved through our survey processes, including the State of Tennessee Licensing survey and the AAAHC re-accreditation survey.

- 2) Verify that the applicant has reviewed and understands all licensing and/or certification as required by the State of Tennessee and/or accrediting agencies such as the Joint Commission for medical/clinical staff. These include, without limitation, regulations concerning clinical leadership, physician supervision, quality assurance policies and programs, utilization review policies and programs, record keeping, clinical staffing requirements, and staff education.

We have reviewed and understand all licensing and/or certification requirements required by the State of Tennessee, CMS, and our accrediting body, AAAHC. Through survey processes, we have been found to be in compliance with these requirements.

- 3) Discuss the applicant's participation in the training of students in the areas of medicine, nursing, social work, etc. (e.g., internships, residencies, etc.).

A number of the surgeons on KESC's medical staff participate in the training of medical students. When those students are on rotation with a member of KESC's medical staff, they observe surgeries and receive instruction from the surgeon. KESC hosts two-three medical school students each month.

KESC also provides clinical rotations for students working toward a certification as Surgical Technologists through Tennessee College for Applied Technology.

- D. Identify the type of licensure and certification requirements applicable and verify the applicant has reviewed and understands them. Discuss any additional requirements, if applicable. Provide the name of the entity from which the applicant has received or will receive licensure, certification, and/or accreditation.

Licensure: ***State of Tennessee***

Certification Type (e.g. Medicare SNF, Medicare LTAC, etc.): Accreditation (i.e., Joint Commission, CARF, etc.): ***Ambulatory Surgical Treatment Center, accredited by Accreditation Association for Ambulatory Healthcare (AAAHC).***

- 1) If an existing institution, describe the current standing with any licensing, certifying, or accrediting agency. Provide a copy of the current license of the facility and accreditation designation.

KESC is in good standing with the State of Tennessee Board of Licensure for Healthcare Facilities and is accredited by the Accreditation Association for Ambulatory Healthcare (AAAHC). A copy of both documents is attached, in attachment B-Orderly Development.D.1.

- 2) For existing providers, please provide a copy of the most recent statement of deficiencies/plan of

correction and document that all deficiencies/findings have been corrected by providing a letter from the appropriate agency.

See attachment B-Orderly Development D.2.

- 3) Document and explain inspections within the last three survey cycles which have resulted in any of the following state, federal, or accrediting body actions: suspension of admissions, civil monetary penalties, notice of 23-day or 90-day termination proceedings from Medicare/Medicaid/TennCare, revocation/denial of accreditation, or other similar actions.

Not applicable. There have been no such findings at any time during KESC's history.

- a) Discuss what measures the applicant has or will put in place to avoid similar findings in the future.

Not applicable.

E. Respond to all of the following and for such occurrences, identify, explain and provide documentation:

- 1) Has any of the following:

- a) Any person(s) or entity with more than 5% ownership (direct or indirect) in the applicant (to include any entity in the chain of ownership for applicant);

No; each owner owns less than 5%.

- b) Any entity in which any person(s) or entity with more than 5% ownership (direct or indirect) in the applicant (to include any entity in the chain of ownership for applicant) has an ownership interest of more than 5%; and/or

Not applicable.

- c) Any physician or other provider of health care, or administrator employed by any entity in which any person(s) or entity with more than 5% ownership in the applicant (to include any entity in the chain of ownership for applicant) has an ownership interest of more than 5%.

Not applicable.

- 2) Been subjected to any of the following:

- a) Final Order or Judgment in a state licensure action;

No.

- b) Criminal fines in cases involving a Federal or State health care offense;

No.

- c) Civil monetary penalties in cases involving a Federal or State health care offense;

No.

- d) Administrative monetary penalties in cases involving a Federal or State health care offense;

No.

- e) Agreement to pay civil or administrative monetary penalties to the federal government or any state in cases involving claims related to the provision of health care items and services; and/or

No.

- f) Suspension or termination of participation in Medicare or Medicaid/TennCare programs.

No.

- g) Is presently subject of/to an investigation, regulatory action, or party in any civil or criminal action of which you are aware.

No.

- h) Is presently subject to a corporate integrity agreement.

No.

F. Outstanding Projects:

- 1) Complete the following chart by entering information for each applicable outstanding CON by applicant or share common ownership; and

<u>Outstanding Projects</u>					
<u>CON Number</u>	<u>Project Name</u>	<u>Date Approved</u>	<u>*Annual Progress Report(s)</u>		<u>Expiration Date</u>
			<u>Due Date</u>	<u>Date Filed</u>	
	<i>Not applicable</i>				

* Annual Progress Reports – HSDA Rules require that an Annual Progress Report (APR) be submitted each year. The APR is due annually until the Final Project Report (FPR) is submitted (FPR is due within 90 ninety days of the completion and/or implementation of the project). Brief progress status updates are requested as needed. The project remains outstanding until the FPR is received.

- 2) Provide a brief description of the current progress, and status of each applicable outstanding CON.

KESC does not have any outstanding Certificates of Need.

G. Equipment Registry – For the applicant and all entities in common ownership with the applicant.

HF-0004 Revised 12/2016 – All forms prior to this time are obsolete.

RDA 1651

- 1) Do you own, lease, operate, and/or contract with a mobile vendor for a Computed Tomography scanner (CT), Linear Accelerator, Magnetic Resonance Imaging (MRI), and/or Positron Emission Tomographer (PET)?

No.

- 2) If yes, have you submitted their registration to HSDA? If you have, what was the date of submission?

Not applicable.

- 3) If yes, have you submitted your utilization to Health Services and Development Agency? If you have, what was the date of submission?

Not applicable.

SECTION B: QUALITY MEASURES

Please verify that the applicant will report annually using forms prescribed by the Agency concerning continued need and appropriate quality measures as determined by the Agency pertaining to the certificate of need, if approved.

Yes, if approved, KESC will fulfill any reporting requirements put forth by the Agency.

SECTION C: STATE HEALTH PLAN QUESTIONS

T.C.A. §68-11-1625 requires the Tennessee Department of Health's Division of Health Planning to develop and annually update the State Health Plan (found at <http://www.tn.gov/health/topic/health-planning>). The State Health Plan guides the State in the development of health care programs and policies and in the allocation of health care resources in the State, including the Certificate of Need program. The 5 Principles for Achieving Better Health are from the State Health Plan's framework and inform the Certificate of Need program and its standards and criteria.

Discuss how the proposed project will relate to the 5 Principles for Achieving Better Health found in the State Health Plan.

- A. The purpose of the State Health Plan is to improve the health of the people of Tennessee.

This project will help to ensure access to procedures which will improve the health and healthy life span of the people of the service area, in particular those people who are over the age of 65. Ensuring that sufficient capacity is available to serve the growing elderly population with needed ophthalmic surgery is important to help those over 65 years of age continue to have an active and healthy lifestyle.

- B. People in Tennessee should have access to health care and the conditions to achieve optimal health.

Access to healthcare includes many factors, include having enough capacity within the

existing base of providers to take care of growth in the target population, acceptance of a broad array of insurance coverages, and providing services in the most efficient environment possible for the patient. This project expands KESC's ability to provide timely and efficient surgical services to the people of the service area. KESC is in network with all major insurance carriers, including all TennCare plans, helping people with all kinds of health plan coverage to receive services.

- C. Health resources in Tennessee, including health care, should be developed to address the health of people in Tennessee while encouraging economic efficiencies.

As an ambulatory surgical treatment center, KESC is providing high quality surgical services in an environment that costs the healthcare system approximately half of what the same services would cost in a hospital environment. One key element of improving efficiencies in healthcare is to offer services in the lowest-acuity setting possible, which this project supports by expanding outpatient surgery capacity in the market.

- D. People in Tennessee should have confidence that the quality of health care is continually monitored and standards are adhered to by providers.

KESC is in good standing with the State as well as accredited by AAAHC. KESC's leadership team is focused on quality and adherence to standards, and those efforts are validated through routine licensing and accreditation surveys. KESC also participates in the Ambulatory Surgery Centers Association (ASCA) benchmarking process, which enables us to review our own performance in both clinical quality and business operations against similar centers.

- E. The state should support the development, recruitment, and retention of a sufficient and quality health workforce.

KESC's project will support the state's goal to develop, recruit and retain a quality healthcare workforce. The staff currently in place is highly trained and qualified, with clinical staff consisting primarily of registered nurses and certified surgical technicians. Staff hired to support the additional needs of KESC and its patients for this project will be expected to have the same qualifications and to maintain those qualifications throughout the period of employment. We require every staff member to stay current with training and offer an extensive training and orientation period for new employees.

PROOF OF PUBLICATION

Attach the full page of the newspaper in which the notice of intent appeared with the mast and dateline intact or submit a publication affidavit from the newspaper that includes a copy of the publication as proof of the publication of the letter of intent.

A publisher's affidavit is attached.

NOTIFICATION REQUIREMENTS

(Applies only to Nonresidential Substitution-Based Treatment Centers for Opiate Addiction)

Note that T.C.A. §68-11-1607(c)(9)(A) states that "...Within ten (10) days of the filing of an application for a nonresidential substitution-based treatment center for opiate addiction with the agency, the applicant shall send a notice to the county mayor of the county in which the facility is proposed to be located, the state representative and senator representing the house district and senate district in which the facility is proposed to be located, and to the mayor of the municipality, if the facility is proposed to be located within the corporate boundaries of a municipality, by certified mail, return receipt requested, informing such officials that an application for a nonresidential substitution-based treatment center for opiate addiction has been filed with the agency by the applicant."

Failure to provide the notifications described above within the required statutory timeframe will result in the voiding of the CON application.

Please provide documentation of these notifications.

DEVELOPMENT SCHEDULE

T.C.A. §68-11-1609(c) provides that a Certificate of Need is valid for a period not to exceed three (3) years (for hospital projects) or two (2) years (for all other projects) from the date of its issuance and after such time shall expire; provided, that the Agency may, in granting the Certificate of Need, allow longer periods of validity for Certificates of Need for good cause shown. Subsequent to granting the Certificate of Need, the Agency may extend a Certificate of Need for a period upon application and good cause shown, accompanied by a non-refundable reasonable filing fee, as prescribed by rule. A Certificate of Need which has been extended shall expire at the end of the extended time period. The decision whether to grant such an extension is within the sole discretion of the Agency, and is not subject to review, reconsideration, or appeal.

1. Complete the Project Completion Forecast Chart on the next page. If the project will be completed in multiple phases, please identify the anticipated completion date for each phase.
2. If the response to the preceding question *indicates that the applicant does not anticipate completing the project within the period of validity as defined in the preceding paragraph*, please state below any request for an extended schedule and document the "good cause" for such an extension.

PROJECT COMPLETION FORECAST CHART

Assuming the Certificate of Need (CON) approval becomes the final HSDA action on the date listed in Item 1. below, indicate the number of days from the HSDA decision date to each phase of the completion forecast.

Phase	<u>Days Required</u>	<u>Anticipated Date</u> [Month/Year]
1. Initial HSDA decision date		June / 2017
2. Architectural and engineering contract signed	10	July / 2017
3. Construction documents approved by the Tennessee Department of Health	40	August / 2017
4. Construction contract signed	50	August / 2017
5. Building permit secured	65	September / 2017
6. Site preparation completed	125	November / 2017
7. Building construction commenced	140	November / 2017
8. Construction 40% complete	230	February / 2018
9. Construction 80% complete	320	May / 2018
10. Construction 100% complete (approved for occupancy)	365	July / 2018
11. *Issuance of License	395	August / 2018
12. *Issuance of Service	400	August / 2018
13. Final Architectural Certification of Payment	400	August / 2018
14. Final Project Report Form submitted (Form HR0055)	430	September / 2018

*For projects that **DO NOT** involve construction or renovation, complete Items 11 & 12 only.

NOTE: If litigation occurs, the completion forecast will be adjusted at the time of the final determination to reflect the actual issue date

AFFIDAVIT

FEB 15 '17 AM 9:53

STATE OF TN

COUNTY OF Knox

Melanie B. Burgess, being first duly sworn, says that he/she is the applicant named in this application or his/her/its lawful agent, that this project will be completed in accordance with the application, that the applicant has read the directions to this application, the Rules of the Health Services and Development Agency, and T.C.A. §68-11-1601, *et seq.*, and that the responses to this application or any other questions deemed appropriate by the Health Services and Development Agency are true and complete.

Melanie B. Burgess / Administrator
SIGNATURE/TITLE

Sworn to and subscribed before me this 14th day of February, 2017 a Notary
(Month) (Year)

Public in and for the County/State of Tennessee.

Philip T. Higgs
NOTARY PUBLIC

My commission expires April 28, 2020.
(Month/Day) (Year)





SECRET

P.O.#:

State of Tennessee }
County of Knox } S.S.

(The Above-Referenced)

02/10/2017

Louise Watt

Notary Public

My commission expires 20



MY COMMISSION EXPIRES
MAY 5, 2019

NOTIFICATION OF INTENT TO APPLY FOR A CERTIFICATE OF NEED

This is to provide official notice to the Health Services and Development Agency and all interested parties, in accordance with T.C.A. § 68-11-1601 et seq., and the Rules of the Health Services and Development Agency, that Knoxville Eye Surgery Center, LLC, d/b/a Tennessee Valley Eye Center, single specialty ambulatory surgical treatment center, owned by: Knoxville Eye Surgery Center, LLC with an ownership type of Limited Liability Corporation and to be managed by: Knoxville Eye Surgery Center, LLC intends to file an application for a Certificate of Need for a replacement ambulatory surgical treatment center to be located at 160 Capital Drive, Knoxville, TN 37922. The replacement ambulatory surgical treatment center will include an expansion from four operating rooms to six operating rooms and will continue to function as a single specialty ophthalmology ASTC. No new services are being initiated. The proposed project cost is \$7,063,651.

The anticipated date of filing the application is: February 15, 2017. The contact person for this project is Melanie B. Burgess, Administrator, who may be reached at: Knoxville Eye Surgery Center, LLC, 140 Capital Drive, Knoxville, TN, 37922.

Upon written request by interested parties, a local Fact-Finding public hearing shall be conducted. Written requests for hearings should be sent to:

**Health Services and Development Agency
Andrew Jackson Building, 9th Floor
502 Deaderick Street
Nashville, TN 37243**

The published Letter of Intent must contain the following statement pursuant to TCA §68-11-16-07(c)(1). (A) Any health care institution wishing to oppose a Certificate of Need application must file a written notice with the Health Services and Development Agency no later than fifteen (15) days before the regularly scheduled Health Services and Development Agency meeting at which the application is originally scheduled; and (B) Any other person wishing to oppose the application must file written objection with the Health Services and Development Agency at or prior to the consideration of the application by the Agency.

Appendix – Attachment Schedule

A.3.A.2a.....	Listing of KESC Owners
A.4.A.....	Certificate of Corporate Existence and Operating Agreement
A.4.B.....	Ownership Structure/Organizational Chart
A.6A.....	Deed
A.6B-1 a-d.....	Plot Plan
A.6B-2.....	Floor Plan
B.Need.A.3.....	Service Area Historical Utilization Chart
B.Need.A.8.....	Patient Origin Chart
B.Need.A.11.a.....	HRSA Data Warehouse Report
B.Need.C(1).....	Patient Origin Chart
B.Need.C(2).....	Service Area Demographic Statistics
B.Need.D.1.b.....	Service Area Demographic Statistics
B.Need.E.....	Service Area Historical Utilization Chart
B.Economic Feasibility.3.....	Fixed and Moveable Equipment
B.Economic Feasibility.5.....	Development Consultant's and Architect's Letters
B.Economic Feasibility.B.....	Letter from Lending Institution
B.Economic Feasibility.E.3.....	Charge Schedule
B.Economic Feasibility.F.1.....	Financial Statements
B.Orderly Development.D.1.....	License and Accreditation
B.Orderly Development.D.2.....	Plan of Correction

Attachment A.3.A.2a

Knoxville Eye Surgery Center, LLC, d/b/a Tennessee Valley Eye Center
List of Owners

Partner #	Partner Name	Practice Name	Partner % of Profit Sharing	Title	Effective date of ownership	Member of Board of Governors?
1	Albert Holmes, MD	Baptist Eye Surgeons	4.1667%	MD	07/01/1999	
2	Darin S. Smith, MD	Baptist Eye Surgeons	4.1667%	MD	01/01/2000	
3	J. Franklin Murchison, MD	Baptist Eye Surgeons	4.1667%	MD	07/01/1999	Yes
4	L. Nichols Cook, MD	Baptist Eye Surgeons	4.1667%	MD	07/01/1999	Yes
5	Marc Bodenheimer, MD	Baptist Eye Surgeons	4.1667%	MD	09/01/2010	
6	Mark Y. Ivens, MD	Baptist Eye Surgeons	4.1667%	MD	07/01/1999	
7	Paul Pruett, MD	Baptist Eye Surgeons	4.1667%	MD	07/01/2016	
8	R. Gene Price, MD	Knoxville Eye Center	4.1667%	MD	01/01/2000	Yes
9	Gary N. Gitschlag, MD	Knoxville Pediatric Ophthalmology	4.1667%	MD	07/01/1999	
10	James H. Miller, MD	Southeastern Retina Associates	4.1667%	MD	07/01/1999	
11	Joseph M. Googe, MD	Southeastern Retina Associates	4.1667%	MD	07/01/1999	
12	Nicholas G. Anderson, MD	Southeastern Retina Associates	4.1667%	MD	07/01/2007	Yes
13	Robert K. Shuler, Jr., MD	Southeastern Retina Associates	4.1667%	MD	07/01/2014	
14	Stephen L. Perkins, MD	Southeastern Retina Associates	4.1667%	MD	07/01/1999	
15	Tod McMillan, MD	Southeastern Retina Associates	4.1667%	MD	01/01/2000	Yes
16	Steven L. Sterling, MD	Sterling Eye Care	4.1667%	MD	07/01/1999	
17	Bradley L. Pearman, MD	University Eye Specialists	4.1667%	MD	07/01/1999	
18	Charles G. Ange, MD	University Eye Specialists	4.1667%	MD	07/01/1999	
19	David J. Harris, MD	University Eye Specialists	4.1667%	MD	07/01/1999	
20	Herbert J. Glatt, MD	University Eye Specialists	4.1667%	MD	07/01/1999	Yes
21	James M. Rouse, MD	University Eye Specialists	4.1667%	MD	09/01/2013	
22	James T. Doss, Jr., MD	University Eye Specialists	4.1667%	MD	09/01/2013	
23	Jonathon W. Sowell, MD	University Eye Specialists	4.1667%	MD	07/01/1999	
24	Paul D. Froula, MD	University Eye Specialists	4.1667%	MD	07/01/1999	Yes

Totals

100.0%

Attachment A.4.A



Tre Hargett
Secretary of State

Division of Business Services

Department of State

State of Tennessee

312 Rosa L. Parks AVE, 6th FL

Nashville, TN 37243-1102

Filing Information

Name: **KNOXVILLE EYE SURGERY CENTER, LLC**

General Information

SOS Control # 000323583

Filing Type: Limited Liability Company - Domestic
01/10/1997 11:02 AM

Status: Active

Duration Term: Perpetual

Managed By: Board Managed

Formation Locale: TENNESSEE

Date Formed: 01/10/1997

Fiscal Year Close 12

Member Count: 7

Registered Agent Address

MELANIE BURGESS
STE 2
140 CAPITAL DR
KNOXVILLE, TN 37922-3572

Principal Address

STE 2
140 CAPITAL DR
KNOXVILLE, TN 37922-3572

The following document(s) was/were filed in this office on the date(s) indicated below:

Date Filed	Filing Description	Image #
04/04/2016	2015 Annual Report	B0224-9683
	Principal Address 1 Changed From: 1928 ALCOA HWY To: 140 CAPITAL DR	
	Principal Address 2 Changed From: STE 324 To: STE 2	
	Principal Postal Code Changed From: 37920-1505 To: 37922-3572	
	Registered Agent First Name Changed From: LARRY To: MELANIE	
	Registered Agent Middle Name Changed From: G To: No Value	
	Registered Agent Last Name Changed From: RAUEN To: BURGESS	
	Registered Agent Physical Address 1 Changed From: 1928 ALCOA HWY To: 140 CAPITAL DR	
	Registered Agent Physical Address 2 Changed From: STE 324 To: STE 2	
	Registered Agent Physical Postal Code Changed From: 37920-1505 To: 37922-3572	
03/10/2015	2014 Annual Report	B0064-3647
03/07/2014	Assumed Name Renewal	7297-0691
	Assumed Name Changed From: TENNESSEE VALLEY EYE CENTER To: TENNESSEE VALLEY EYE CENTER	
	Expiration Date Changed From: 04/08/2014 To: 03/07/2019	
03/07/2014	2013 Annual Report	7296-2597
02/22/2013	2012 Annual Report	7152-2342

Filing Information

FEB 15 '17 AM 9:54

Name: **KNOXVILLE EYE SURGERY CENTER, LLC**

03/02/2012 2011 Annual Report	7006-0266
Principal Postal Code Changed From: 37920 To: 37920-1505	
06/21/2011 2010 Annual Report	6905-2560
Member Count Changed From: 6 To: 7	
06/02/2011 Notice of Determination	A0073-2305
03/05/2010 2009 Annual Report	6669-0202
Member Count Changed From: 26 To: 6	
07/28/2009 2008 Annual Report	6575-3146
06/03/2009 Notice of Determination	ROLL 6550
03/18/2009 Assumed Name Renewal	6478-1559
03/18/2009 Assumed Name Renewal	6478-1561
02/22/2008 2007 Annual Report	6224-1254
07/27/2007 2006 Annual Report	6103-0855
06/21/2007 Notice of Determination	ROLL 6065
02/15/2006 2005 Annual Report	5688-1572
01/20/2005 2004 Annual Report	5330-3057
Member Count Changed	
03/19/2004 Assumed Name Renewal	5073-0674
03/04/2004 2003 Annual Report	5057-0164
Member Count Changed	
02/12/2004 Assumed Name Renewal	5036-1237
03/10/2003 2002 Annual Report	4748-2271
Member Count Changed	
09/24/2002 Assumed Name Renewal	4608-1026
03/18/2002 2001 Annual Report	4447-3002
02/27/2001 2000 Annual Report	4134-2831
Member Count Changed	
04/24/2000 1999 Annual Report	3894-1374
Member Count Changed	
05/12/1999 Assumed Name	3681-2138
05/12/1999 Assumed Name	3681-2139
04/08/1999 Assumed Name	3664-3189
02/22/1999 CMS Annual Report Update	3633-3313
05/27/1998 Articles of Amendment	3515-1083
02/17/1998 CMS Annual Report Update	3452-2494

Filing Information

Name: **KNOXVILLE EYE SURGERY CENTER, LLC**

Fiscal Year Close Changed

01/10/1997 Initial Filing

3264-1723A

Active Assumed Names (if any)

TENNESSEE VALLEY EYE CENTER

Date

Expires

04/08/2009

03/07/2019

**SECOND
AMENDED AND RESTATED
OPERATING AGREEMENT
OF
KNOXVILLE EYE SURGERY CENTER, LLC**

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1.5 Agreed Terms.....	2
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1.14 Company.....	2
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1.37 Personal Representative.....	5

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**SECOND
AMENDED AND RESTATED
OPERATING AGREEMENT
OF
KNOXVILLE EYE SURGERY CENTER, LLC**

This SECOND AMENDED AND RESTATED OPERATING AGREEMENT is made and entered into as of the 1st day of January, 2000, by and among CHARLES G. ANGE, M.D.; L. NICHOLS COOK, M.D.; PAUL D. FROULA, M.D.; GARY N. GITSCHLAG, M.D.; HERBERT J. GLATT, M.D.; JOSEPH M. GOOGE, M.D.; ROBERT E. HALL, M.D.; DAVID J. HARRIS, M.D.; ALBERT K. HOLMES, M.D.; JOHN C. HOSKINS, M.D.; MARK Y. IVENS, M.D.; JAMES R. KIMBLE, M.D.; D. LEE MCDANIEL, M.D.; TOD A. MCMILLAN, M.D.; JAMES H. MILLER, JR., M.D.; J. FRANKLIN MURCHISON, M.D.; LARRY G. RAUEN; KEITH A. SLATER; DARIN S. SMITH, M.D.; JONATHAN W. SOWELL, M.D.; STEVEN L. STERLING, M.D.; and ALEX STOCKDALE.

WITNESSETH:

WHEREAS, the Initial Members have formed a limited liability company under the Act for the purpose of conducting certain business activities described herein;

WHEREAS, since the formation of the Company by the Initial Members, McMillan, Price and Smith have become Members of the Company; and

WHEREAS, the Members desire to amend and restate the Operating Agreement of the Company as set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual promises contained herein, the Members hereby adopt this Amended and Restated Operating Agreement:

**ARTICLE I
DEFINITIONS**

As used in this Agreement, unless the context clearly requires otherwise, the following terms in this Article shall have the following meanings.

1.1 Act. "Act" shall mean the Tennessee Limited Liability Company Act, Tennessee Code Annotated Sections 48-201-101, *et seq.*, as amended from time to time.

1.2 Administrative Committee. "Administrative Committee" shall mean the committee elected by the Board of Governors to oversee the planning and development of the Facility and to make recommendations to the Board of Governors and the Members concerning development of the Facility.

1.3 Additional Member. "Additional Member" shall mean a Member other than an Initial Member or a Substitute Member, who has acquired a Membership Interest from the Company and has become a Member in accordance with **Section 14.3**.

1.4 Agreed Price. "Agreed Price" shall mean the price at which, pursuant to the terms of this Agreement, a Member must offer to sell all or any of his or her Membership Interest to the Company, as set forth in **Article 13**.

1.5 Agreed Terms. "Agreed Terms" shall mean the terms and conditions under which the sale of a Member's Membership Interest to the Company is conducted, including (but not limited to) the form of consideration to be paid, the time of the closing, and the steps to be taken at the closing.

1.6 Ambulatory Surgery Center. "Ambulatory Surgery Center" shall mean any health care institution, other than the Facility, located in the Geographical Area which performs ophthalmological procedures and is licensed as an ambulatory surgery center by the Tennessee Board for Licensing Health Care Facilities and charges a facility fee for surgical procedures performed at such facility.

1.7 Agreement. "Agreement" shall mean this Operating Agreement, as amended or restated from time to time.

1.8 Articles or Articles of Organization. "Articles" or "Articles of Organization" shall mean the Articles of Organization of the Company filed with the Secretary of State of Tennessee pursuant to the Act.

1.9 Assignee. "Assignee" shall mean a transferee of Financial Rights who has not been admitted as a Substitute Member.

1.10 Board or Board of Governors. "Board" or "Board of Governors" shall mean the Board of Governors elected pursuant to **Article IX**.

1.11 Capital Account. "Capital Account" shall mean the account maintained for a Member or Assignee determined in accordance with **Article IV**.

1.12 Capital Contribution. "Capital Contribution" shall mean any contribution of money, property, services or the obligation to contribute money, property, or services made by or on behalf of a Member or Assignee.

1.13 Code. "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

1.14 Company. "Company" shall mean KNOXVILLE EYE SURGERY CENTER, LLC, the limited liability company formed under this Agreement pursuant to the Act.

1.15 Contribution Allowance Agreement. "Contribution Allowance Agreement" shall mean an agreement between a Person and the Company under which the Person has the right, but not the obligation, to make a Capital Contribution to the Company in the future, and

the Company agrees that if the Person makes the specified Capital Contribution at the time and in the manner specified for the Capital Contribution in the future, the Company will accept the Capital Contribution and reflect the Capital Contribution in its records.

1.16 Days. "Days" shall mean all calendar days, whether or not such days are legal holidays under the laws of the United States or any State.

1.17 Deficit Capital Account. "Deficit Capital Account" shall mean with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the taxable year, after giving effect to the following adjustments:

- (a) Credit to such Capital Account any amount which such Member is obligated to restore under Regulations Section 1.704-1(b)(2)(ii)(c), as well as any addition thereto pursuant to the next to last sentence of Regulations Sections 1.704-2(g)(1) and (i)(5), after taking into account thereunder any changes during such year in partnership minimum gain (as determined in accordance with Regulations Section 1.704-2(d)) and in the minimum gain attributable to any partner nonrecourse debt (as determined under Regulations Section 1.704-2(i)(3)); and
- (b) Debit to such Capital Account the items described in Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

This definition of Deficit Capital Account is intended to comply with the provisions of Regulations Sections 1.704-1(b)(2)(ii)(d) and 1.704-2, and shall be interpreted consistently with those provisions.

1.18 Distribution. "Distribution" shall mean a transfer of money or property to a Member on account of Financial Rights as described in **Article VI**.

1.19 Encumber or Encumbrance. "Encumber or Encumbrance" shall mean to pledge, hypothecate, or otherwise secure any type of debt or obligation with Membership Interest, whether incurred voluntarily or involuntarily, and in any manner whatsoever. An "Encumbrance" is any type of security or surety interest created by such Encumbering.

1.20 Facility. "Facility" shall mean the Tennessee Valley Eye Center, developed and operated by the Company located at 140 Capital Drive, Knoxville, Tennessee.

1.21 Financial Rights. "Financial Rights" shall mean a Member's or Assignee's share of the Company's Net Profits, Net Losses, and Distributions from the Company pursuant to this Agreement and the Act, but shall not include any Governance Rights, including right to participate in the operation, management or affairs of the Company, including the right to vote on, consent to, or otherwise participate in any decision of the Members. A Member's or Assignee's Financial Rights shall be expressed by a percentage or a fractional percentage of the total Financial Rights held by all Members and Assignees of the Company. The Initial Member's Financial Rights are set forth on **Exhibit A**.

1.22 Geographical Area. "Geographical Area" shall mean Knox County, Tennessee, and any area not within Knox County, Tennessee which is within a radius of seventy-five (75) miles from the Facility.

1.23 Governance Rights. "Governance Rights" shall mean all of a Member's rights as a Member in the Company other than Financial Rights, including, without limitation, the right of the Member to vote for the election of Governors and other significant business and affairs of the Company. Governance Rights include, without limitation, the right to vote on, consent to or otherwise participate in any decision, vote or action of or by the Members granted pursuant to this Agreement and the Act. A Member's Governance Rights shall be expressed as a percentage of the Governance Rights of all the Members.

1.24 Governor. "Governor" shall mean a member of the Board of Governors.

1.25 Initial Capital Contribution. "Initial Capital Contribution" shall mean the Capital Contribution agreed to be made by the Initial Members as described in **Article IV**.

1.26 Initial Members. "Initial Members" shall mean the Members who initially formed the Company as of January 1, 1997, being the shareholders and administrators of University Eye Surgeons, P.C., and Southeastern Retina Associates, P.C., the members and administrator of Baptist Eye Surgeons, PLLC, and Gary N. Gitschlag, M.D.

1.27 Manager. "Manager" shall mean a Person elected, appointed, or otherwise designated as a manager by the Board of Governors pursuant to **Article X**.

1.28 Majority Interest. "Majority Interest" shall mean the Units of one (1) or more Members which taken together exceed fifty percent (50%) of the aggregate of all Units.

1.29 Member. "Member" shall mean an Initial Member, Substitute Member or Additional Member of the Company.

1.30 Membership Interest. "Membership Interest" shall mean a Member's entire interest in the Company including such Member's Financial Rights and a Member's Governance Rights as provided in this Agreement. A Member's Membership Interest shall be expressed as a percentage of the Membership Interests held by all Members. The Initial Members Membership Interest are set forth on **Exhibit A**.

1.31 Net Cash Flow. "Net Cash Flow" shall mean the gross cash proceeds from Company operations less the portion thereof used to pay or establish reserves for all Company expenses, debt payments, capital improvements, replacements and contingencies as determined by the Board of Governors. Net Cash Flow shall not be reduced by depreciation, amortization, cost recovery deductions, or similar allowances, but shall be increased by any reductions of reserves previously established. Net Cash Flow shall also include the net cash proceeds from all sales and other disposition of property, less any portion thereof used to establish reserves as determined by the Board of Governors. Net Cash Flow shall also include all principal and interest payments with respect to any note or other obligation received by the Company in connection with sales or other dispositions (other than in the ordinary course of business) of property.

1.32 Net Losses. "Net Losses" shall mean the losses and deductions of the Company determined in accordance with accounting principles consistently applied from year to year employed under the method of accounting adopted by the Company and as reported separately or in the aggregate as appropriate, on the tax return of the Company filed for federal income tax purposes.

1.33 Net Profits. "Net Profits" shall mean the income and gains of the Company determined in accordance with accounting principles consistently applied from year to year employed under the method of accounting adopted by the Company and as reported separately or in the aggregate, as appropriate, on the tax return of the Company filed for federal income tax purposes.

1.34 Offered Financial Rights. "Offered Financial Rights" shall mean all of the Financial Rights which are offered for sale to the other Members or to the Company, or which are deemed to have been so offered pursuant to this Agreement.

1.35 Offering Member. "Offering Member" shall mean the Member (or his or her Personal Representative) who offers or is deemed to offer to sell some or all of his or her Financial Rights to the other Members, pursuant to this Agreement.

1.36 Person. "Person" shall include an individual, trust, estate, or any entity.

1.37 Personal Representative. "Personal Representative" shall mean any administrator, executor, trustee, or other personal representative who is vested with the responsibility for administering the disposition of any Membership Interest on account of a deceased Member's death, and equally any individual who holds such Membership Interest as a legatee, distributee, or successor in interest, or trustee, where no executor, administrator, or similar fiduciary is appointed or where any appointed executor, administrator, or fiduciary does not have control over any of the deceased Member's Membership Interest.

1.38 Regulations. "Regulations" shall mean except where the context indicates otherwise, the permanent, temporary, proposed, or proposed and temporary regulations of the Department of the Treasury under the Code as such regulations may be lawfully changed from time to time.

1.39 Substitute Member. "Substitute Member" shall mean an Assignee who has been admitted as a Member of the Company in accordance with **Section 14.2**.

1.40 Super Majority Interest. "Super Majority Interest" shall mean the Units of one (1) or more Members which taken together equal seventy-five percent (75%) or more of the aggregate of all Units.

1.41 Transfer. "Transfer" shall mean any sale, pledge, Encumbrance, gift, bequest, or other transfer of any Membership Interest or Financial Rights to someone not already a Member, whether or not for value. An "Involuntary Lifetime Transfer" is any Transfer made on account of a court order or otherwise by operation of law, including any Transfer incident to any bankruptcy, divorce or marital property settlement or any Transfer pursuant to applicable community property, quasi-community property or similar state law. A "Voluntary Lifetime

Transfer" is any Transfer made during a Member's lifetime which is not an Involuntary Lifetime Transfer. Unless the context indicates otherwise, "Transfer" includes both Voluntary and Involuntary Lifetime Transfers. A Transfer made to a trust that is wholly revocable by the Transferor shall not be a Transfer for purposes of this Agreement, but any subsequent Transfer by the trustee of such trust shall be deemed to have been made by the trust's grantor.

1.42 Units. "Units" shall mean the Member's voting power (or Governance Rights) on any decision, vote or action taken by the Members granted pursuant to this Agreement and the Act. Units shall be expressed as a number with the total number of Units held by all Members being Eight Thousand One Hundred (8,100). The Members' Units are set forth on **Exhibit A**.

ARTICLE II ORGANIZATION

2.1 Name. The name of the Company is KNOXVILLE EYE SURGERY CENTER, LLC. All business of the Company shall be conducted under that name or any trade name or assumed name which may be adopted under the Act.

2.2 Purposes. The purpose of the Company is to develop, equip and operate an ambulatory surgical treatment center to perform ophthalmological surgical procedures; to engage in any lawful business or activity agreed upon by the Members; and to do any and all other acts and things which may be necessary or incidental to the business of the Company.

2.3 Powers. The Company shall have all the powers of a limited liability company under the Act.

2.4 Term. The term of the Company shall begin upon the filing of the Articles with the Secretary of State of Tennessee, and continue until dissolved pursuant to this Agreement, by act of the Secretary of State of Tennessee, or by order of a court of competent jurisdiction pursuant to the Act.

2.5 Principal Executive Office. The principal executive office of the Company in the State of Tennessee shall be located at 1928 Alcoa Highway, Suite 324, Knoxville, Knox County, Tennessee 37920. The Company may have such other offices, either within or without the State of Tennessee as the Board of Governors may designate or as the business of the Company may from time to time require.

2.6 Registered Office. The registered office of the Company in the State of Tennessee shall be located at 1928 Alcoa Highway, Suite 324, Knoxville, Knox County, Tennessee 37920. The registered agent at such address shall be Larry G. Rau. The registered office and the registered agent may be changed from time to time by action of the Board of Governors and by filing the prescribed form with the Secretary of State of Tennessee.

2.7 Company Property. All real and personal property of the Company now or hereafter acquired by the Company shall be owned, held or operated in the name of the Company or in the name of any entity designated by the Board of Governors as nominee for the Company and solely for the benefit of the Company pursuant to the terms, conditions and provisions of this

Agreement. No Member shall have any ownership interest in any Company property in the Member's individual capacity.

ARTICLE III MEMBERS; MEMBERSHIP INTERESTS

3.1 Information Regarding Members. The following information required by Section 48-206-101 of the Act, as amended, regarding the Members is set forth on the Exhibits to this Agreement:

- (a) The identity of all of the Members and their Membership Interests, and the identity of all Persons bound by a Contribution Agreement or the owners of a Contribution Allowance Agreement and the Membership Interest that will be acquired upon the satisfaction of the terms of such agreement.
- (b) The amount of cash and a description and statement of the agreed value of any other Capital Contribution for each Membership Interest.
- (c) The amount and value of any Capital Contribution which any Member or potential Member has agreed pursuant to a Contribution Agreement, to contribute and the time or times at which, or events on the happening of which, such Capital Contribution agreed is to be made.
- (d) The amount and value of any Capital Contribution which any Member or potential Member has the right pursuant to a Contribution Allowance Agreement to contribute and the time or times at which or event on the happening of which such Capital Contribution must be made or the right lapses.

3.2 Member Representations and Warranties. Each Member, severally but not jointly, hereby represents, warrants, confirms and agrees with the Company and the other Members as follows:

- (a) Each Member has full right, power and authority to execute and deliver this Agreement and to perform each of such Member's obligations hereunder.
- (b) This Agreement has been duly executed and delivered by or on behalf of each Member and constitutes the valid and binding obligation of each Member in accordance with its terms.
- (c) No Member is subject to any restriction or agreement which prohibits or will be violated by the execution and delivery hereof or by the consummation of the transactions contemplated hereby or pursuant to which the consent of any third Person is required in order to give effect to the transactions contemplated herein.

- (d) Each Member acknowledges that (i) the Membership Interests have not been registered under the Securities Act of 1933 and the Tennessee Securities Act of 1980, as amended, on the ground that investment in the Company is exempt from registration as being a limited offering not involving a public offering and that the aggregate amount of Membership Interests offered does not exceed Two Hundred and Fifty Thousand Dollars (\$250,000) in any twelve (12) month period; (ii) such Member's interest is being acquired for such Member's own account with no present intention of reselling or otherwise disposing of the same; and (iii) that the reliance of the other Members and the Company is predicated upon the lack of any present intention of resale or other disposition of any Membership Interest.
- (e) Each Member acknowledges that no representations of any have been made by the Company regarding the Company's future financial performance to induce the Member to become a Member of the Company.
- (f) Each Member confirms that he or she does not now intend to Transfer all or any portion of his or her Membership Interest and that to the best of each Member's knowledge and belief there are no circumstances in the foreseeable future, of which such Member is now aware, which would require the resale of any portion of the Member's Membership Interest, and that such Member will in no event sell, otherwise Transfer any portion of a Member's Membership Interest unless, in the opinion of legal counsel to the Company, such interest may be legally sold, transferred or otherwise disposed of without registration or qualification under the Securities Act of 1933 or the Tennessee Securities Act of 1980 (or the availability of an exemption therefrom), or that the interest shall have been so registered or qualified and a registration statement shall then be in effect with respect thereto.
- (g) Each Member acknowledges that no trading market for the Membership Interests does or will exist at any time, and that no Member's interest in the Company will at any time be transferrable without potential adverse tax consequences.
- (h) Each Member acknowledges that the disposition of each Member's Membership Interest in the Company is also limited by other provisions of this Agreement.
- (i) By reason of each Member's involvement in the formation of the Company, each Member acknowledges he or she has had access to all information he or she has requested or deems relevant with respect to the Member's Membership Interest, including but not limited to financial, market and operations information.

3.3 Membership Qualifications. No Person shall be entitled to become a Member of the Company unless such Person shall be a physician licensed to practice medicine in the State of Tennessee who has completed approved training in the specialty of ophthalmology or one of the recognized subspecialties of ophthalmology, or is employed as the chief administrator of a professional corporation or professional limited liability company engaged in the practice of ophthalmology or one of the recognized subspecialties of ophthalmology. Each Member who refers patients or performs surgical procedures at the Facility certifies that his or her medical practice involves the performance of surgical procedures (as defined at 42 C.F.R. § 1001.952(h)) at a hospital or other health care facility and that at least one-third (1/3) of such Member's medical practice income comes from the performance of such surgical procedures. In addition, no Person shall be entitled to become a Member of the Company or remain a Member of the Company if such Person holds any form of ownership or investment interest in any Ambulatory Surgery Center in the Geographic Area other than the Company or the Facility. If any Member invests in such Ambulatory Surgery Center, such Member shall be deemed to have offered his or her Membership Interest for sale to the Company, which shall purchase the Membership Interest at the Agreed Price and on the Agreed Terms. Except for the Initial Members, a physician shall obtain medical staff privileges at the Facility and perform surgical procedures for a six (6) month period before being eligible to become a Member of the Company.

ARTICLE IV CAPITAL CONTRIBUTIONS; CAPITAL ACCOUNTS

4.1 Capital Contributions. Each Member shall make the Capital Contribution prescribed for that Member on **Exhibit B** at the time and on the terms specified on **Exhibit B**. No interest shall accrue on any Capital Contribution and no Member shall have the right to withdraw or be repaid any Capital Contribution except as provided in this Agreement.

4.2 Additional Contributions. The Members shall make such additional Capital Contributions as shall from time to time be deemed necessary by agreement of the Members holding a Super Majority Interest. In the event any Member (a "Delinquent Member") fails to make a required Capital Contribution, the Chief Manager shall give the Delinquent Member written notice of such failure. If the Delinquent Member fails to make the required Capital Contribution within thirty (30) days of the giving of notice, the other Members may take such action as they deem appropriate, including but not limited to enforcing the obligation to make the Capital Contribution in a court of competent jurisdiction, or making the Capital Contribution of the Delinquent Member in proportion to such Members' respective Membership Interests. The Contributing Members shall be entitled to treat the amounts so contributed pursuant to this **Section 4.2** as a loan to the Delinquent Member bearing interest at the prime rate of interest, secured by the Delinquent Member's interest in the Company. Until they are fully repaid, the Contributing Members shall be entitled to all Distributions to which the Delinquent Member would have been entitled. Notwithstanding the foregoing, no obligation to make an additional Capital Contribution may be enforced by a creditor of the Company unless the Members expressly consent to such enforcement or to the assignment of the obligation to such creditor.

4.3 Maintenance of Capital Accounts. The Company shall establish and maintain Capital Accounts for each Member and Assignee. Each Member's and Assignee's Capital Account shall be increased by (1) the amount of any money actually contributed by the Member

or Assignee to the capital of the Company, (2) the fair market value of any property contributed, as determined by the Company and the contributing Member or Assignee at arm's length at the time of contribution (net of any liabilities assumed by the Company or subject to which the Company takes such property within the meaning of Section 752 of the Code), and (3) the Member's or Assignee's share of Net Profits and of any separately allocated items of income or gain except adjustments required under Section 704(c) of the Code (including any gain and income from unrealized income with respect to accounts receivable allocated to the Member or Assignee to reflect the difference between the book value and tax basis of property contributed by the Member or Assignee). Each Member's or Assignee's Capital Account shall be decreased by (1) the amount of any money actually distributed to the Member or Assignee by the Company, (2) the fair market value of any property distributed to the Member or Assignee by the Company (net of liabilities of the Company assumed by the Member or Assignee or subject to which the Member or Assignee takes such property within the meaning of Section 752 of the Code), and (3) the Member's or Assignee's share of Net Losses and of any separately allocated items of deduction or loss (including any loss or deduction allocated to the Member or Assignee to reflect the difference between the book value and tax basis of property contributed by the Member or Assignee).

4.4 Distribution of Property. If the Company at any time distributes any of its property to any Member or Assignee, the Capital Account of each such Member or Assignee shall be adjusted to account for the Member's or Assignee's allocable share (as determined under **Article V**) of the Net Profits or Net Losses that would have been realized by the Company had it sold the property that was distributed at its respective fair market value immediately prior to its Distribution.

4.5 Sale or Exchange of Financial Rights. In the event of a sale or exchange of some or all of a Member's or Assignee's Financial Rights, the Capital Account of the transferring Member or Assignee shall become the Capital Account of the Assignee acquiring such Financial Rights, to the extent it relates to the portion of the Financial Rights transferred.

4.6 Compliance with Code Section 704(b). The provisions of this **Article IV** as they relate to the maintenance of Capital Accounts are intended, and shall be construed, and, if necessary, modified to cause the allocations of profits, losses, income, gain and credit pursuant to **Article V** to have substantial economic effect under the Regulations promulgated under Section 704(b) of the Code, in light of the Distributions made pursuant to **Article VI** and the Capital Contributions made pursuant to this **Article IV**.

ARTICLE V ALLOCATIONS

5.1 Allocations of Net Profits and Net Losses. Except as may be required by Section 704(c) of the Code or this Agreement, Net Profits, Net Losses, and other items of income, gain, loss, deduction and credit shall be apportioned among the Members in proportion to their Financial Rights. Each Initial Member's Financial Rights are as set forth on **Exhibit A**.

5.2 Minimum Gain Chargeback. Notwithstanding the provisions of **Section 5.1**, and except as otherwise provided by Regulations Section 1.704-2(f), if there is a net decrease in

partnership minimum gain, as defined by Regulations Section 1.704-2(b)(2) and 1.704-2(d), during any Company taxable year, each Member shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Member's share of the net decrease in partnership minimum gain, determined in accordance with Regulations Section 1.704-2(g)(2). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Section 1.704-2(f)(6) of the Regulations. This is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(f) of the Regulations and shall be interpreted consistently therewith.

5.3 Partner Minimum Gain Chargeback. Except as otherwise provided in Section 1.704-2(i)(4) of the Regulations, notwithstanding the provisions of **Section 5.1**, if there is a net decrease in partner non-recourse debt minimum gain, as defined in Regulations Section 1.704-2(i)(3), attributable to a partner non-recourse debt, as defined in Regulations Section 1.704-2(b)(4), during any Company taxable year, each Member who has a share of the partner non-recourse debt minimum gain attributable to such partner non-recourse debt, determined in accordance with Section 1.704-2(i)(5) of the Regulations, shall be specially allocated items of Company income and gain for such taxable year, (and, if necessary, subsequent taxable years, in an amount equal to such Partner's share of the net decrease in partner non-recourse debt minimum gain attributable to such partner non-recourse debt determined in accordance with Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items be so allocated shall be determined in accordance with Sections 1.704-2(i)(4) and 1.704-2(j)(2) of the Regulations. This Section is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(i)(4) of the Regulations and shall be interpreted consistently therewith.

5.4 Non-Recourse Deductions. Notwithstanding the provisions of **Section 5.1**, any partner non-recourse deductions, as defined in Sections 1.704-2(i)(1) and 1.704-2(i)(2) of the Regulations, for any taxable year or other period shall be specially allocated to the Member who bears the economic risk of loss with respect to the partner non-recourse debt, to which such partner non-recourse deductions are attributable in accordance with Regulations Section 1.704-2(i)(1).

5.5 Qualified Income Offset. Notwithstanding the provisions of **Section 5.1**, if a Member unexpectedly receives any adjustments, allocations or distributions described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), or any other event given such Member a Deficit Capital Account in excess of such Member's share of minimum gain, items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate such excess deficit balance as quickly possible. Any special allocations of items of income and gain pursuant to this Section shall be taken into account in computing subsequent allocations of income and gain pursuant to this Article so that the net amount of any items so allocated and the income, gain and losses allocated to each Member pursuant to this Section, to the extent possible, shall be equal to the net amount that would have been allocated to such Member pursuant to the provisions of this Article if such unexpected adjustments, allocations, or distributions had not occurred.

5.6 Gross Income Allocation. In the event any Member has a Deficit Capital Account at the end of any Company taxable year which is in excess of the sum of (a) the amount, if any, such Member is obligated to restore and (b) the amount such Member is deemed to be obligated to restore pursuant to the next to last two sentences of Sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Regulations, each such Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section shall be made if any only to the extent that such Member would have a Deficit Capital Account in excess of such sum after all other allocations provided for in this Article have been tentatively made as if this Section and **Section 5.4** hereof were not in this Agreement.

5.7 Code Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Section of the Regulations.

ARTICLE VI DISTRIBUTIONS

6.1 Net Cash Flow. Distributions of Net Cash Flow shall be made to the Members in proportion to their Financial Rights at such times and in such amounts as shall be determined by the Board of Governors from time to time. A Distribution may be in cash or property (which need not be distributed proportionately) or partly in both.

6.2 Amounts Withheld. Any amounts withheld pursuant to the Code or any provision of law of any other taxing jurisdiction with respect to any payment, Distribution or allocation to any Member shall be treated as a Distribution to such Member pursuant to this **Article VI** for all purposes under this Agreement.

ARTICLE VII ACCOUNTING MATTERS; BOOKS AND RECORDS; TAXES

7.1 Books and Records. The Company shall keep, or cause to be kept, complete and accurate books and records of account of its activities. The books and records of the Company shall be kept at the principal executive office of the Company or at such other places, within or without the State of Tennessee, as the Board of Governors shall from time to time direct. The books and records kept by the Company shall include all of the records specified in Section 48-228-101(a) of the Act.

7.2 Right of Inspection. Any Member shall have the right to examine, at any reasonable time or times for all purposes, the books and records of account, minutes and records of Members and to make copies thereof. Such inspection may be made by any agent or attorney of the Member. Upon the written request of any Member of the Company, the Company shall

mail to such Member the Company's most recent financial statements, showing in reasonable detail its assets and liabilities and the results of operations.

7.3 Reports. Within ninety (90) days after the end of each fiscal year of the Company, the Company shall provide to each Member a copy of the balance sheet of the Company as of the last day of such fiscal year, a statement of the Company's cash flow for such fiscal year, a statement of income or loss for the Company for such fiscal year, and a statement of each Member's Capital Account and changes in such account for all Members for such fiscal year.

7.4 Tax Returns. The Company shall provide to each Member a copy of each income tax return filed by the Company, together with any schedules or other information which each Member may require in connection with such Member's individual income tax returns.

7.5 Tax Matters Member. The Members designate the Chief Manager to act as Tax Matters Member of the Company pursuant to Section 6231(a)(7) of the Code. The Chief Manager shall take such action as may be necessary to cause each other Member to become a notice member within the meaning of Section 6223 of the Code. The Chief Manager may not take any action contemplated by Sections 6222 through 6232 of the Code without the approval of the Board of Governors.

7.6 Elections. The Board of Governors may make any tax elections for the Company allowed under the Code or the tax laws of any state or other jurisdiction having taxing jurisdiction of the Company.

7.7 Taxes of Taxing Jurisdictions. To the extent that the laws of any taxing jurisdiction so require, each Member will submit an agreement indicating that the Member will make timely income tax payments to such taxing jurisdiction and that the Member acknowledges personal jurisdiction of the taxing jurisdiction with regard to the collection of income taxes attributable to the Member's income, and interest and penalties assessed on such income. If the Member fails to provide such agreement, the Company may withhold and pay over to such taxing jurisdiction the amount of tax, penalties and interest determined to be owed under the laws of the taxing jurisdiction with respect to such income. Any such payments with respect to the income of a Member shall be treated as a Distribution pursuant to **Section 6.2**. The Members may, where permitted by the rules of any taxing jurisdiction, file a composite, combined or aggregate tax return reflecting the income of the Company and pay the tax, interest and penalties of some or all of the Members on such income to the taxing jurisdiction, in which case the Company shall inform the Members of the amount of such tax, penalties and interest so paid.

7.8 Fiscal Year. The fiscal year of the Company shall begin on the first day of January and end on the last day of December each year, unless otherwise determined by the Board of Governors.

7.9 Deposits. All funds of the Company shall be deposited from time to time to the credit of the Company in such banks, trust companies or other depositories as the Board of Governors may select.

7.10 Checks, Drafts. All checks, drafts or other orders for the payment of money, and all notes or other evidences of indebtedness issued in the name of the Company may be signed by the Chief Manager, or by such other officers or employees of the Company as the Board of Governors may designate.

ARTICLE VIII ACTIONS BY MEMBERS

8.1 Member Voting. Each Member's voting power shall be expressed as a percentage of the total Membership Interests held by all Members. Each Member's Membership Interest, which represents each Member's voting power on each matter voted on by the Members, is set forth on **Exhibit A**. Only Members shall be entitled to vote.

8.2 Annual Meeting. An annual meeting of the Members shall be held each year for the purpose of election of managers and transacting such other business as may properly come before the meeting. The meeting shall be held at such place in or out of the State of Tennessee as the Board of Governors may designate.

8.3 Special Meetings. Special meetings of the Members may be called by any Governor or Manager. A special meeting of the Members may also be called by the Members holding not less than twenty percent (20%) of the total Membership Interests of the Company.

8.4 Place of Meetings. Member meetings shall be held at the principal executive office of the Company or at any other place, within or without the State of Tennessee, as the Board of Governors may from time to time designate.

8.5 Notice Requirements. Written or printed notice stating the place, day and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called and the Person or Persons calling the meeting, shall be delivered either personally or by mail by or at the direction of the Chief Manager, the Secretary or the Person or Persons calling the meeting, to each Member entitled to vote at the meeting, to any other Member who will be entitled to dissent from an action on which Members are to vote at the meeting and to such other Persons entitled to notice under the Act. If mailed, such notice shall be delivered not less than ten (10) days nor more than two (2) months before the date of the meeting and shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his address as it appears on the Membership records of the Company, with postage thereon prepaid. If delivered personally, such notice shall be delivered not less than ten (10) days, nor more than two (2) months before the date of the meeting and shall be deemed delivered when actually received by the Member.

8.6 Waiver of Notice. A Member may waive any notice required by the Articles, this Agreement or the Act. A waiver of notice by a Member entitled thereto is effective, whether given before or after the meeting or other balloting, if the notice is in writing. If a written waiver is given, the Secretary shall place such written waiver in the records of the Company. A Member's attendance at a meeting is a waiver of notice of that meeting, unless the Member objects at the beginning of the meeting (or promptly upon his arrival) to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an

item of business because the item may not lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting. The Secretary shall note the objection in the minutes of the meeting.

8.7 Quorum. The Members holding a Majority Interest, or more, of the Membership Interests, either present in person or represented by duly executed proxy, shall constitute a quorum at all meetings of the Members. Voting power held by any interested party may be counted in determining whether a quorum is present at a meeting of Members which ratifies or approves a transaction of the Company. When a quorum is once present to organize a meeting, it is not broken by the subsequent withdrawal of any of those present. A meeting may be adjourned despite the absence of a quorum.

8.8 Proxies. At all meetings of Members, a Member may vote by proxy executed in writing by the Member or by his duly authorized attorney-in-fact. Such proxy shall be filed with the Chief Manager of the Company before or at the time of the meeting. No proxy shall be valid after three months from date of execution, unless otherwise provided in the proxy.

8.9 Voting. Whenever any Company action is to be taken by vote of the Members, it shall be taken if authorized by a vote of the Members representing a Majority Interest of the Membership Interests, except as otherwise provided by the Act, the Articles or this Agreement.

8.10 Action by Consent. The Members may take any action by written consent in lieu of a meeting if:

- (a) A written waiver of acting at a meeting is signed by Members holding a Majority Interest or, as the case may be, such greater percentage of voting power as is required to take the particular action; and
- (b) A written consent is signed by Members who own Membership Interests with voting power equal to the voting power that would be required to take the same action at a meeting of the Members at which all Members are present.

Action taken under this Section is effective when all Members required by **Section 8.10(b)** have signed the written consent, unless the written consent specifies a different effective date. The record date for determining Members entitled to vote or take action without a special meeting pursuant to this Section shall be the date the first Member signs a written consent. If an action by the Members is taken without a special meeting as provided in this Section, notice to the Members shall be considered waived.

8.11 Meeting by Any Form of Communication. At the discretion of the Board of Governors, any and all Members may participate in an annual or special meeting by the use of any means of communication by which all Members participating may simultaneously hear each other during the meeting, to the extent any such Members are entitled to attend such meeting. A Member participating in a meeting by this means is deemed to be present in person at the meeting.

8.12 Procedure. The Chairman of the Board of the Company shall preside at all meetings of the Members. The Members may adopt their own rules of procedure for meetings consistent with this Agreement and the Act.

8.13 Presumption of Assent. A Member who is present at a meeting of the Members at which action on any matter is taken shall be presumed to have assented to the action taken, unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the Secretary before the adjournment of the meeting or shall forward such dissent by certified mail to the Secretary immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Member who voted in favor of such action.











8.14 Records of Member Actions. The Company shall maintain records of all actions taken by the Members pursuant to this Agreement, including minutes of all meetings of Members, copies of all actions taken by written consent of the Members, and copies of all proxies pursuant to which one Member votes or executes a written consent on behalf of another.

ARTICLE IX BOARD OF GOVERNORS

9.1 Number and Tenure. The number of Governors, consisting of the Board, shall be six (6). Each Governor shall be elected for a term of three (3) years. Each Governor shall hold office until the expiration of the term for which he or she is elected and thereafter until his or her successor is duly elected and qualified. The Governor(s) shall be chosen by a vote of the Members at their annual meeting or at any meeting held in place thereof as provided in the Act. The number of Governors may be changed by vote of the Members holding a Majority Interest, but shall not be less than three (3) or more than ten (10). The Governors may, but shall not be required to, elect a Governor to be Chairman of the Board of Governors, who shall preside at all meetings of Governors and Members, and shall discharge such other duties and responsibilities as shall be imposed upon him by the Governors or the Members.

9.2 Regular Meetings of the Board of Governors. Immediately after the annual election of Governors by the Members, the Governors may meet at the same place for the purpose of organization, the election of managers and the transaction of other business; if a quorum of the Governors be then present no prior notice of such meeting shall be required. Other regular meetings of the Board shall be held at such times and places as the Board by resolution may determine and specify, and if so determined no notice thereof need be given, provided that unless all the Governors are present at the meeting at which said resolution is passed, the first meeting held pursuant to said resolution shall not be held for at least five (5) days following the date on which the resolution is passed.

9.3 Special Meetings. Special meetings of the Board of Governors may be held at any time or place whenever called by the Chief Manager, by written request of at least two (2) Governors, notice thereof being given to each Governor by the Secretary or other Person calling the meeting. Notwithstanding the foregoing, meetings of the Board of Governors may be held at any time without formal notice provided all of the Governors are present or those not present shall at any time waive or have waived notice thereof.

9.5 Meetings by any Form of Communication. The Board of Governors shall have the power to permit any and all Governors to participate in a regular or special meeting by, or conduct the meeting through the use of any means of communication by which all Governors participating may simultaneously hear each other during the meeting. A Governor participating in a meeting by this means is deemed to be present in person at the meeting.

9.6 Quorum. Four (4) members of the Board of Governors shall constitute a quorum for the transaction of business, but a lesser number may adjourn any meeting and the meeting may be held as adjourned without further notice. When a quorum is present at any meeting, a majority vote of those present shall decide any question brought before such meeting, except as otherwise provided by the Act or by this Agreement. The fact that a Governor has an interest in a matter to be voted on at the meeting shall not prevent the Governor from being counted for purposes of determining a quorum.

9.7 Vacancies. Any vacancy occurring on the Board of Governors, including vacancies by virtue of removal with or without cause, resignation, or an increase in the number of Governors, may be filled by the vote of a majority of the Governors then serving as Governors. If the Governor who is removed is a member of a group practice, the Member elected to replace the Governor shall be a member or shareholder of the same group practice.

9.8 Compensation. The Governors shall be paid their actual and reasonable expenses, if any, of attendance at each meeting of the Board of Governors. The Governors may be paid a salary or other compensation as a Governor, as determined by the Members from time to time. This provision shall not preclude any Governor from serving the Company as a Manager and receiving compensation therefor.

9.9 Removal. Any Governor may be removed without cause by a vote of the Members holding a Majority Interest, not including the Membership Interest of the Member sought to be removed as a Governor. A Governor may also be removed for cause by a vote of the Members representing a Majority Interest, not counting the Membership Interest of the Member sought to be removed as a Governor. Cause shall be defined as conviction of a felony or any other crime relating to the practice of medicine, declaration of unsound mind by court order, adjudication of bankruptcy, nonacceptance of office or conduct prejudicial to the interest of the Company, as determined by the Board of Governors. A Governor may be removed by the Members only at a meeting called for the purpose of removing a Governor and the meeting notice must state that the purpose, or one of the purposes, of the meeting is the removal of a Governor or Governors.

9.10 Committees. The majority of the Board of Governors may appoint an executive committee or such other committees as it may deem advisable, composed of one (1) or more

Governors, and may delegate authority to such committees as is not inconsistent with the Act. The members of such committee shall serve at the pleasure of the Board of Governors. The Board of Governors shall also have the authority to appoint an Administrative Committee to make recommendations to the Board of Governors or the Members concerning the development of the Facility, but the Administrative Committee shall have no independent authority to take action.

9.11 Informal Action by Governors. Any action required to be taken at a meeting of the Board of Governors, or any other action which may be taken at a meeting of the Board of Governors, may be taken without a meeting if all Governors consent to taking such action without a meeting. If all Governors consent to taking such action without a meeting, the affirmative vote of the majority of the entire Board of Governors is the act of the Board. The action must be evidenced by one or more written consents describing the action taken, signed by each Governor, indicating each signing Governor's vote or abstention on the action, and shall be filed with the Company records reflecting the action taken. Notwithstanding the foregoing, the Governors may take action by written consent without the consent of all Governors to the taking of such action without a meeting if the action is approved by the affirmative vote of at least two-thirds (2/3) of the Governors, in which case signed written consents evidencing such approval shall be filed with the Company records reflecting the action so taken.

ARTICLE X MANAGERS

10.1 Number. The Managers of the Company shall be a Chief Manager and a Secretary, each of whom shall be elected by the Board of Governors. The Board of Governors shall also elect a Chairman of the Board of Governors, and may elect a Treasurer and such other Managers as the Board may deem necessary. Any two (2) or more offices may be held by the same Person, except the offices of Chief Manager and Secretary. The Managers may be Members and shall be residents of the State of Tennessee.

10.2 Term of Office. Each Manager shall hold office until a successor shall have been duly elected and qualified or until his or her death or until he or she shall resign or shall have been removed in the manner hereinafter provided.

10.3 Removal and Resignation. A Manager serves at the pleasure of the Board of Governors, and the Board of Governors may remove a Manager at any time. The Board of Governors may also eliminate any manager position other than Chief Manager or Secretary at any time. The removal of a Manager is without prejudice to the contractual rights of the Manager, if any. Any Manager may resign at any time and for any reason. In the event of a vacancy in any office because of death, resignation or removal, the Board of Governors shall elect a successor to such office.

10.4 Chairman of the Board of Governors. The Chairman of the Board of Governors shall preside at all meetings of the Board of Governors and the Members and shall exercise and perform such other powers and duties as may be assigned to him or her by the Board of Governors from time to time.

10.5 Chief Manager. The Chief Manager shall be the principal executive officer of the Company and shall supervise and control all of the business and affairs of the Company. The Chief Manager shall see that all orders and resolutions of the Board of Governors are implemented. The Chief Manager shall sign and deliver in the name of the Company any deeds, mortgages, bonds, contracts or other instruments pertaining to the business of the Company, except in cases in which the authority to sign and deliver is required by law to be exercised by another Person or is expressly delegated to another person by the Articles, this Agreement or the Board of Governors of the Company. The Chief Manager shall perform any other duties prescribed by the Board of Governors. In the event that the Company has a vacancy in the office of Secretary, any notices, documents or other matters that otherwise are required to go to the Secretary shall be delivered to the Chief Manager.

10.6 Secretary. The Secretary shall keep accurate membership records for the Company and maintain records of and, whenever necessary, certify all proceedings of the Board of Governors or the Members of the Company. The Secretary shall also receive notices required to be sent to the Secretary and to keep a record of such notices in the records of the Company and shall perform such other duties as are prescribed by the Board of Governors or by the Chief Manager. The Secretary is an agent of the Company and may legally bind the Company.

10.7 Treasurer. The Treasurer (if elected) shall be the chief financial officer of the Company and shall prepare and maintain accurate financial statements and records of the Company. The Treasurer shall be authorized to maintain the Company's banking accounts, administer accounts payable and receivable, maintain records of Member Capital Contributions, administer payroll, supervise preparation of federal, state and local income tax returns, and perform such other duties as are prescribed by the Board of Governors or by the Chief Manager. The Treasurer is an agent of the Company and may legally bind the Company.

10.8 Delegation. A Manager may delegate some or all of the duties and powers of his office to other Persons. A Manager who delegates the duties or powers of an office remains subject to the standard of conduct as a Manager with respect to the discharge of all duties and powers so delegated.

10.9 Compensation. The Managers shall be paid their actual and reasonable expenses for serving as a Manager. The Managers shall receive such salary or other compensation for serving as a Manager as the Board of Governors shall determine.

ARTICLE XI INDEMNIFICATION; CONFLICTS OF INTEREST

11.1 Indemnification. The Company shall indemnify its Governors and Managers to the fullest extent permitted by the Act. Claims for indemnification shall be presented and approved in the manner provided by the Act.

11.2 Conflicts of Interest.

- (a) No Member, Manager or Governor shall be entitled to enter into transactions that may be considered to be competitive with, or a business opportunity that may be beneficial to, the Company, it being expressly

understood that some of the Members, Managers and Governors may enter into transactions that are similar to the transactions into which the Company may enter but which are not competitive with the Company or constitute a Company opportunity. Nothing contained in this **Section 11.2** shall be construed to limit any Member's private practice of ophthalmology, which shall not be considered competitive with the Company, except that no Member shall be permitted to hold any type of investment interest in any Ambulatory Surgery Center other than the Facility.

- (b) No Member, Manager or Governor violates a duty or obligation to the Company merely because the conduct furthers his or her own interest. Any Member, Manager or Governor may lend money to and transact other business with the Company. The rights and obligations of a Member, Manager or Governor who lends money to or transacts business with the Company are the same as those of a Person who is not a Member, Manager or Governor, subject to other applicable law. No transaction with the Company shall be voidable solely because a Member, Manager or Governor has a direct or indirect interest in the transaction if the transaction is fair to the Company and the disinterested Governors, knowing the material facts of the transaction and the Member's, Manager's or Governor's interest therein, authorize, approve, or ratify the transaction.

ARTICLE XII

RIGHTS, DUTIES AND OBLIGATIONS OF MEMBERS

12.1 Members Not Agents of Company. No Member, solely by virtue of his Membership Interest in this Company, is an agent of the Company and no Member shall have authority to bind the Company by his or her acts, unless the Board of Governors has granted such Member specific, written authority to act for the Company in a particular matter.

12.2 Members Have No Exclusive Duty to Company. Neither the Company nor any Member shall have any right, by virtue of this Operating Agreement, to share or participate in such other investments or activities of any other Member or to the income or proceeds derived therefrom. No Member shall incur any liability to the Company or to any of the other Members as a result of engaging in any other business or venture, so long as such other business or venture meets the requirements of **Section 11.2**.

12.3 Liability of Members to Third Parties. Unless otherwise provided by the Act, no Member shall be liable under any judgment, decree, or order of a court, or in any other manner, for any debt, obligation or liability of the Company, whether arising in contract, tort or otherwise, or for the acts or omissions of any Member, Governor, Manager, agent or employee of the Company.

12.4 Liability of Members to the Company. A Member, who receives a Distribution made by the Company when the assets of the Company are not sufficient to pay all liabilities of

the Company except liabilities to Members on account of their Capital Contributions, is liable to the Company for a period of two (2) years after such Distribution for the amount thereof.

12.5 Approval of Sale or Disposition of Company Assets. The Members shall have the right, by the affirmative vote or action of the Members holding a Super Majority Interest, to approve the sale or exchange of all, or substantially all, of the Company's assets (other than in the ordinary course of the Company's business) which is to occur as part of a single transaction or plan. If the Facility operated by the Company is sold at a price that includes goodwill, any Initial Member who sold his Membership Interest to the Company within the two (2) years prior to the closing date for the sale of the Facility shall be entitled to a share of the goodwill value. If the closing date of such sale occurs within twelve (12) months of the sale of an Initial Member's Membership Interest, such Member shall receive one hundred percent (100%) of the goodwill value he or she would have otherwise received if he or she were still a Member on the closing date of the sale. If the closing date of such sale occurs more than twelve (12) months but less than twenty-four (24) months of the sale of an Initial Member's Membership Interest, such Member shall receive fifty percent (50%) of the goodwill value he or she would have otherwise received if he or she were still a Member on the closing date of the sale.

12.6 Approval of Bankruptcy Filing. The Company may file for bankruptcy protection under applicable law only after such action has been approved by a written instrument adopted by the Members holding a Super Majority Interest.

12.7 Approval of Merger or Consolidation. The Members shall have the right, by the affirmative vote or action of Members holding a Super Majority Interest, to approve the merger or consolidation of the Company with or into any other Entity.

12.8 Preemptive Rights. Members shall not have preemptive rights.

ARTICLE XIII TRANSFER OF MEMBERSHIP INTERESTS

13.1 Limitations. An Assignee of Financial Rights under this **Article XIII** shall have only those rights of an Assignee as described more fully in **Section 14.1** hereof and shall have no right to become a Member of the Company or to exercise the assignor's Governance Rights unless such Assignee is admitted as a Substitute Member in accordance with **Section 14.2**. The Members do not want any Membership Interest, or any portion thereof, to be made generally available to persons other than the present Members. Therefore, in addition to restrictions provided under applicable state law, the Members agree that no Member will Encumber, Transfer or permit to be Encumbered or Transferred, all or any portion of his or her Membership Interest, including any Financial Rights, whether now or hereafter acquired, except in accordance with the terms of this Agreement. Any attempted Encumbrance or Transfer of any Membership Interest, Governance Rights, or Financial Rights not in accordance with the terms of this Agreement shall be void and not reflected on the Company's books and records.

13.2 Encumbrance; Transfer. No Member may Encumber any or all of his or her Membership Interest in connection with any debt without the approval of the Board of Governors. No Member may Transfer any or all of his or her Financial Rights or Governance

Rights to any Person, other than the Company, under any circumstance. Any attempted transfer to anyone other than the Company shall be void, and shall not be recorded on the books and records of the Company.

13.3 Voluntary Lifetime Transfers. No Member may make a Voluntary Lifetime Transfer of Financial Rights, Governance Rights or Membership Interests. Any Member who desires to transfer his or her Membership Interest, Financial Rights or Governance Rights must offer to sell his or her Membership Interest to the Company at the Agreed Price and on the Agreed Terms, and the Company must purchase the Membership Interest at the Agreed Price and on the Agreed Terms.

13.4 Involuntary Lifetime Transfer. Any Member who has any information that would reasonably lead him or her to expect that an Involuntary Lifetime Transfer is foreseeable must promptly send a notice to the Company and shall be deemed to have offered to sell his or her Membership Interest otherwise to be Transferred to the Company at the Agreed Price and on the Agreed Terms, and the Company must purchase the Membership Interest at the Agreed Price and the Agreed Terms. Such notice shall include a description of the proposed Transfer, the name, address (both home and office), and business or occupation of the expected transferee, and any other facts that are, or would reasonably be deemed to be, material to the involuntary Transfer.

13.5 Death of a Member. Upon the death of any Member, his or her Personal Representative will immediately be deemed to have offered to sell first to the Company and then to the remaining Members all of the deceased Member's Financial Rights at the Agreement Price and on the Agreement Terms, and the Company may accept within thirty (30) days of such deemed offer and agree to buy of such Offered Financial Rights, provided that if the Company fails to accept such Offered Financial Rights within the allowed time frame or chooses not to accept such Financial Rights then each other Member may accept within thirty (30) days of such deemed offer and agree to buy of such Offered Financial Rights in proportion to their Financial Rights (excluding the Offered Financial Rights). If neither the Company nor the Members acquire the deceased Member's Financial Rights, then the deceased Member's Financial Rights shall pass pursuant to the terms of the deceased Member's Will, or if the deceased Member is intestate, then to the deceased Member's estate.

13.6 Withdrawal of a Member. No Member may withdraw from the Company without the written consent of the Board of Governors except upon death, retirement from medical practice or relocation of any such Member's medical practice outside of the Geographical Area, in which case such Member (the "Withdrawing Member") shall be deemed to have offered to transfer his or her Membership Interest to the Company at the Agreed Price and upon the Agreed Terms. In the event the withdrawal of a Member is permitted by the written consent of the Board of Governors, the Withdrawing Member will immediately be deemed to have offered to sell to the Company all of the Withdrawing Member's Membership Interest at the Agreed Price and on the Agreed Terms, and the Company shall be required to purchase the Withdrawing Member's Membership Interest at the Agreed Price and on the Agreed Terms. Any Member who fails to continuously meet the qualifications Membership set forth in **Section 3.3** shall be deemed to be a Withdrawing Member, and such Withdrawing Member shall

sell his or her Membership Interest to the Company at the Agreed Price and on the Agreed Terms.

13.7 Breach of this Agreement. In the event any Member materially breaches the terms of this Agreement, such Member will be given written notice of such breach and thirty (30) days to cure the breach. If the breach is not cured within such thirty (30) day period, the breaching Member shall be deemed to have offered to sell his or her Membership Interest to the Company at the Agreed Price and on the Agreed Terms, and the Company shall purchase the breaching Member's Membership Interest at the Agreed Price and on the Agreed Terms. Any Member whose Membership Interest is purchased due to material breach by the Member shall not be entitled to any share of goodwill value upon sale of the Company that such Member would otherwise be entitled under **Section 12.5**.

13.8 Retirement or Relocation. In the event a Member retires from the practice of medicine or relocates his or her medical practice outside of the Geographical Area or, in the case of a Member who is an administrator of an ophthalmology group practice, ceases to serve as the administrator of such ophthalmology group practice all of whose shareholder or members are Members of the Company, such Member shall be deemed to have offered to sell all of his or her Membership Interest to the Company at the Agreed Price and on the Agreed Terms, and the Company shall be required to purchase such Member's Membership Interest at the Agreed Price and on the Agreed Terms.

13.9 Mandatory Purchase of Membership Interests. In addition to death (**Section 13.5**), permitted withdrawal (**Section 13.6**), material breach of this Agreement (**Section 13.7**), retirement or relocation (**Section 13.8**), any Member whose employment (in the case of a professional corporation) or membership (in the case of a professional limited liability company) is terminated for cause with such Member's current ophthalmology group practice, such Member shall be deemed to have offered to sell his or her Membership Interest to the Company at the Agreed Price and on the Agreed Terms, and the Company shall purchase such Membership Interest at the Agreed Price and on the Agreed Terms. Whether the Member's termination of employment or membership in a group practice is "for cause" shall be determined under such Member's employment agreement (in the case of a professional corporation) or operating agreement (in the case of a professional limited liability company), and each Member authorizes his or her group practice to provide written notice of the reason for termination to the Company upon request. In addition, any Member whose Membership Interest is purchased by the Company pursuant to this **Section 13.9** shall not be eligible to share in any goodwill value upon sale of the Company that such Member would otherwise be entitled under **Section 12.5**.

13.10 Agreed Price. The Agreed Price shall be an amount equal to the Member's Capital Account adjusted for the income or loss as of the end of the month preceding the notice of withdrawal or date of death and adjusted for the current fair market value of the Facility, including improvements thereon, and the fair market value of any medical equipment located within the Facility. Fair market value for the Facility and any medical equipment located therein will be determined by the average of two (2) appraisals, with one (1) appraiser selected by the Company and one (1) appraiser selected by the Member whose Membership Interest is being sold. Each appraiser shall be required to be licensed by the State of Tennessee and certified by

the MAI. Any other tangible assets of the Company will be valued at book value as reflected on the books and records of the Company.

13.11 Agreed Terms. Unless the parties agree otherwise, the Agreed Price shall be paid in cash within sixty (60) days of the end of the month following receipt of the appraisals referenced in **Section 13.10**. If more than one (1) Member sells his Membership Interest during a single fiscal year, the Company shall have the option to pay the Agreed Price over an extended period of time, not to exceed five (5) years, at an interest rate equal to the prime rate of interest (as published in the Wall Street Journal on the date of closing of the sale of any Membership Interest).

13.12 Power of Attorney. Each Member appoints the Company as his or her agent and attorney-in-fact to execute and deliver all documents needed to convey his or her Membership Interest or any portion thereof, if such selling Member is not present at the closing. This power of attorney is coupled with an interest, does not terminate on the Member's disability or death, and continues for as long as this Agreement is in effect.

13.13 Right to Repurchase Residual Rights. Upon or contemporaneously with any Transfer of a Member's Financial Rights, which does not at the same time transfer the balance of the rights associated with the Financial Rights transferred by the transferring Member, (including, without limitation, Units and Governance Rights), the Company shall purchase from the transferring Member and the transferring Member shall sell to the Company for a purchase price of ten dollars (\$10.00) all remaining rights and interests retained by the transferring Member which immediately prior to such Transfer were associated with the transferred Financial Rights.

13.14 Resale of Membership Interest By the Company. In the event the Company resells a Membership Interest purchased by the company to a Substitute Member or New Member, the Agreed Price for such Membership Interest shall be the price paid by the Company, unless, in the discretion of the Board of Governors, sufficient time has elapsed since the appraisals of the Facility to require that new appraisals be obtained, in which case the Agreed Price shall be adjusted in accordance with the new appraisals.

ARTICLE XIV

ADMISSION OF ASSIGNEES AND ADDITIONAL MEMBERS

14.1 Rights of Assignees. Notwithstanding anything to the contrary contained in this Agreement, the only rights which an Assignee of a Member shall have are those rights associated with the Financial Rights received and such Assignee shall not possess any Governance Rights or right to become a Member; provided, however, that in the event an Assignee is an existing Member of the Company, such Assignee may receive all Governance Rights and Financial Rights incident to a transferred Membership Interest. If an Assignee is an existing Member, such Assignee shall not receive Governance Rights in the event only Financial Rights were transferred. An Assignee is only entitled to receive the Distributions and return of capital, and to be allocated the Net Profits and Net Losses attributable to transferred Financial Rights.

14.2 Admission of Substitute Members. An Assignee of Financial Rights shall be admitted as a Substitute Member and entitled to all the rights (including Governance Rights and Units) of the Member who initially assigned the Financial Rights only with the written approval of the Board of Governors, which may grant or withhold the approval of such admission in their sole and absolute discretion. Such Substitute Member shall be required to meet the qualifications for membership set forth in **Section 3.3**. If so admitted, the Substitute Member shall have all the rights and powers and is subject to all the restrictions and liabilities of the former Member. The admission of a Substitute Member, without more, shall not release the Member originally assigning the Financial Rights from any liability to the Company that may have existed prior to the approval of the Substitute Member.

14.3 Admission of Additional Members. Any Person who meets the eligibility requirements set forth in **Section 3.3** and this Section shall be eligible to purchase Units and become a Member of the Company upon approval by the Board of Governors. A physician who becomes a member or shareholder of University Eye Surgeons, P.C., Baptist Eye Surgeons, PLLC, Southeastern Retina Associates, P.C. or Gary N. Gitschlag, M.D. (the "Practices") or who has been employed by such Practice for at least two (2) years shall be eligible to apply to the Board of Governors to become a Member of the Company. If approved, such Member shall be required to become a shareholder or member of such Practice within two (2) years thereafter. If such Member fails to become a member or shareholder of such Practice within the additional two (2) year period, such Member shall be required to sell his Membership Interest to the Company at the Agreed Price and on the Agreed Terms. Any physician who becomes eligible to become a Member by virtue of his or her affiliation with one of the Practices shall be eligible to purchase three hundred (300) Units. Any other physician not affiliated with one of the Practices who becomes eligible to become a Member shall be eligible to purchase two hundred and forty (240) Units. No Additional Member shall be entitled to any retroactive allocation of income, gain, loss, deduction or credit by the Company. The Board may at the time the Additional Member is admitted, close the Company's books (as though the Company's taxable year had ended) or make pro rata allocations of income, gain, loss, deduction or credit to the Additional Member for that portion of the Company's taxable year in which the Member was admitted in accordance with the provisions of Section 706(d) of the Code and the Regulations promulgated thereunder. Membership Interests may be granted to Additional Members on January 1 or July 1 of the year in which the physician becomes eligible to purchase a Membership Interest, depending on the date which is closest to time to the event giving rise to such physician's eligibility to become a Member. Upon admission of an Additional Member, this Agreement shall be amended in order to reflect such additional Member's Membership Interest in the Company. Additional Members shall be required to personally guarantee any debt incurred by the Company, to the same extent as the other Members have personally guaranteed such debt incurred by the Company. Any Additional Member must also meet the qualifications for membership set forth in **Section 3.3**. The Capital Contribution for an Additional Member shall be based on the Agreed Price as calculated under **Section 13.10** and shall be determined by applying the Additional Member's Membership Interest to the total value of the Company. The Additional Member's Capital Contribution shall be paid in cash at closing.

ARTICLE XV DISSOLUTION AND WINDING UP

15.1 Dissolution. The Company shall be dissolved and its affairs wound up upon the first to occur of the following events:

- (a) The written consent of the Members holding a Super Majority Interest;
- (b) The merger of the Company with another corporation, limited liability company or other entity in which the Company is not the successor entity in such merger or the consolidation of the Company with one or more limited liability companies, corporations or other entities;
- (c) Upon the sale of all or substantially all of the assets of the Company and the Distribution of the net proceeds therefrom; or
- (d) An event causing there to be less than two (2) Members of the Company.

15.2 Dissolution Events Limited. Events causing the dissolution of the Company shall be limited to those specified in **Section 15.1**. None of the events listed in Section 48-245-101(a)(5) of the Act shall constitute dissolution events of the Company.

15.3 Effect of Dissolution. Upon dissolution, the Company shall cease carrying on, as distinguished from the winding up of, the Company business, but the Company is not terminated, but continues until the winding up of the affairs of the Company is completed and a certificate of dissolution with respect to the Company, or the equivalent thereof, has been issued by the Secretary of State.

15.4 Distribution of Assets on Liquidation. Upon the winding up of the Company, the Company shall be liquidated and the Company property shall be distributed as follows:

- (a) To creditors, excluding Members who are creditors, to the extent permitted by law, in satisfaction of the liabilities of the Company;
- (b) To Members who are creditors, to the extent permitted by law, in satisfaction of the liabilities of the Company;
- (c) To Members in accordance with positive Capital Account balances taking into account all Capital Account adjustments for the Company's taxable year in which the liquidation occurs. Liquidation proceeds shall be paid within sixty (60) days of the end of the Company's taxable year or, if later, within ninety (90) days after the date of liquidation. Such Distribution shall be in cash or property (which need not be distributed proportionally) or partly in both, as determined by the Members.

15.5 Winding Up and Articles of Termination. The winding up of the Company shall be completed when all debts, liabilities, and obligations of the Company have been paid and discharged or reasonably adequate provision therefor has been made, and all of the

remaining assets of the Company have been distributed to the Members. Upon the completion of winding up of the Company, articles of termination shall be delivered to the Secretary of State. The articles of termination shall set forth such information as is required by the Act.

15.6 Rights of Members. Except as otherwise provided herein, each Member shall look solely to the assets of the Company for the return of his or her Capital Contributions, and shall have no right or power to demand or receive property other than cash from the Company. Except as otherwise provided herein, no Member shall have priority over any other Member as to the return of his or her Capital Contributions or as to Distributions or allocations.

ARTICLE XVI MISCELLANEOUS

16.1 Notices. Any notice required or permitted to be given pursuant to the provisions of the Act, the Articles or this Agreement shall be in writing and shall be deemed to have been given when (a) personally delivered, (b) deposited with United States Postal Service, registered or certified, postage prepaid, or (c) sent by facsimile. In each case such notice shall be delivered or addressed, if to the Company, to the principal executive office of the Company, and if to a Member, to the address of such Member set forth on the signature page attached hereto, or to such other address as the Member may from time to time specify by written notice to the Company.

16.2 Waiver of Notice. Whenever any notice is required to be given pursuant to the provisions of the Act, the Articles or this Agreement, a waiver thereof, in writing, signed by the Persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

16.3 Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, each Member and his or her heirs, legatees, legal representatives, successors, transferees and assigns.

16.4 Gender and Number. Whenever the context requires, the gender of all words used herein shall include the masculine, feminine and neuter, and the number of all words shall include the singular and plural thereof.

16.5 Headings. The headings of Articles and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation.

16.6 Entire Agreement. This Agreement represents the entire agreement among all of the Members and between the Members and the Company.

16.7 Governing Law

. This Agreement shall be governed by, and construed and enforced according to, the Act and the other laws of the State of Tennessee. In the event of a conflict between any provision of this Agreement and any non-mandatory provision of the Act, this Agreement shall control and take precedence. Jurisdiction and venue for any action arising under this Agreement shall be the Chancery Court for Knox County, Tennessee.

16.8 Severability. Each provision of this Agreement is intended to be severable, and the invalidity, illegality or unenforceability of any provision hereof for any reason shall not affect or impair the operation or effect of those portions hereof not invalid, illegal or unenforceable.

16.9 No Partnership for Nontax Purposes. The Members have formed the Company as a limited liability company under the Act, and expressly do not intend hereby to form a partnership under either the Tennessee Uniform Partnership Act or the Tennessee Revised Uniform Limited Partnership Act. The Members do not intend to be partners as among themselves or as to any third party. To the extent any Member, by word or action, represents to another Person that any Member is a partner or that the Company is a partnership, the Member making such wrongful representation shall be liable to any other Member who incurs personal liability by reason thereof.

16.10 Compliance with Legal Requirements. The Members have entered into this Agreement with the intention of conducting their relationship in compliance with all applicable laws and regulations. The parties intend that the Company and the Members comply with the requirements of the safe harbor for single specialty ambulatory surgical centers set forth at 42 C.F.R. § 1001.952(r)(2). In the event that any term or condition of this Agreement or the application thereof to any person or event shall, in the opinion of legal counsel for the Company, violates or is potentially deemed to violate any laws, orders, rules or regulations currently enforced by or hereafter promulgated by any federal, state, municipal or other governmental authority or agency (including but not limited to (i) anti-kickback or Fraud and Abuse laws or regulations related to Medicaid and Medicare patients, (ii) any programs and any legislation passed with respect to patient referrals, and (iii) applicable state laws governing the practice of medicine including fee-splitting prohibitions) (the "Health Care Laws") or in the event of any change in the Health Care Laws that has a material effect on the obligations of the Company or any of the Members, the parties agree to renegotiate in good faith to adjust the obligations and undertakings hereunder and to cooperate with one another to the extent necessary to eliminate any basis such governmental or regulatory body or agency may have for its challenge, using their best efforts to preserve the rights and obligations of each party as nearly as possible, so that it complies with such laws or regulations and minimizes the economic effect on both parties. In the event the parties are unable to agree to such adjustments or are otherwise unable to comply with the Health Care Laws, the Company may be dissolved as set forth in **Article XV**.

16.11 Rights of Creditors and Third Parties. This Agreement is entered into among the Members for the exclusive benefit of the Company, its Members, and their successors and assignees. This Agreement is expressly not intended for the benefit of any creditor of the Company or any other person. Except and only to the extent provided by applicable statute, no such creditor or third party shall have any rights under this Agreement or any agreement between the Company and any Member with respect to any Capital Contribution or otherwise.

16.12 Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all Members had signed the same instrument. All executed counterparts shall constitute a single agreement.

16.13 Further Action. Each Member agrees to perform such further acts and execute, acknowledge and deliver any additional documents which may be reasonably necessary or appropriate to carry out the provisions of this Agreement.

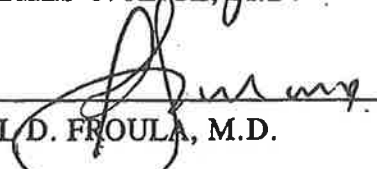
ARTICLE XVII AMENDMENT

This Operating Agreement may be amended or modified from time to time only by a written instrument adopted and executed by the Members representing a Super Majority Interest. No Member shall have any vested rights in this Agreement which may not be modified through an amendment to this Agreement.


[Signatures on following page.]

EXECUTED by each Member as of the date first written above.


CHARLES G. ANGE, M.D.


PAUL D. FROULA, M.D.


HERBERT J. GLATT, M.D.


ROBERT E. HALL, M.D.


ALBERT K. HOLMES, M.D.


MARK Y. IVENS, M.D.


D. LEE MCDANIEL, M.D.


JAMES H. MILLER, JR., M.D.


R. GENE PRICE, M.D.



KEITH A. SLATER


JONATHAN W. SOWELL, M.D.


ALEX M. STOCKDALE


L. NICHOLS COOK, M.D.


GARY N. GITSCHLAG, M.D.


JOSEPH M. GOOGE, M.D.


DAVID J. HARRIS, M.D.


JOHN C. HOSKINS, M.D.


JAMES R. KIMBLE, M.D.


TOD A. MCMILLAN, M.D.


J. FRANKLIN MURCHISON, JR., M.D.


LARRY G. RAUEN


DARIN S. SMITH, M.D.

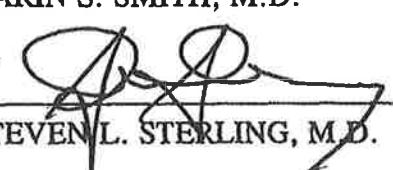

STEVEN L. STERLING, M.D.

EXHIBIT A

<u>Members</u>	<u>Membership Interests/ Governance Rights/Financial Rights</u>	<u>Units</u>
Charles G. Ange, M.D. 1928 Alcoa Hwy., Suite 324 Knoxville, TN 37920	4.808 %	300
L. Nichols Cook, M.D. 2020 Kay Street Knoxville, TN 37920	4.808 %	300
Paul D. Froula, M.D. 1928 Alcoa Hwy., Suite 324 Knoxville, TN 37920	4.808 %	300
Gary N. Gitschlag, M.D. 2100 Clinch Avenue Knoxville, TN 37916	4.808 %	300
Herbert J. Glatt, M.D. 1928 Alcoa Hwy., Suite 324 Knoxville, TN 37920	4.808 %	300
Joseph M. Googe, M.D. 1124 E. Weisgarber Road, Suite 207 Knoxville, TN 37909	4.808 %	300

<u>Members</u>	<u>Membership Interests/ Governance Rights/Financial Rights</u>	<u>Units</u>
Robert E. Hall, M.D. 2020 Kay Street Knoxville, TN 37920	4.808 %	300
David J. Harris, M.D. 1928 Alcoa Hwy., Suite 324 Knoxville, TN 37920	4.808 %	300
Albert K. Holmes, M.D. 2020 Kay Street Knoxville, TN 37920	4.808 %	300
John C. Hoskins, M.D. 1124 E. Weisgarber Road, Suite 207 Knoxville, TN 37909	4.808 %	300
Mark Y. Ivens, M.D. 2020 Kay Street Knoxville, TN 37920	4.808 %	300
James R. Kimble, M.D. 2020 Kay Street Knoxville, TN 37920	4.808 %	300
D. Lee McDaniel, M.D. 1928 Alcoa Highway, Suite 324 Knoxville, Tennessee 37920	4.808 %	300

<u>Members</u>	<u>Membership Interests/ Governance Rights/Financial Rights</u>	<u>Units</u>
Tod A. McMillan, M.D. 1124 E. Weisgarber Road, Suite 207 Knoxville, TN, 37909	4.808 %	300
James H. Miller, Jr., M.D. 1124 E. Weisgarber Road, Suite 207 Knoxville, TN 37909	4.808 %	300
J. Franklin Murchison, Jr., M.D. 2020 Kay Street Knoxville, TN 37920	4.808 %	300
R. Gene Price, M.D. 200 Fort Sanders West Boulevard Knoxville, Tennessee 37922	3.839 %	240
Larry G. Rauen 1928 Alcoa Hwy., Suite 324 Knoxville, TN 37920	1.603 %	100
Keith A. Slater 2020 Kay Street Knoxville, TN 37920	1.603 %	100
Darin S. Smith, M.D. 2020 Kay Street Knoxville, TN 37920	4.808 %	300

<u>Members</u>	<u>Membership Interests/ Governance Rights/Financial Rights</u>	<u>Units</u>
Jonathan W. Sowell, M.D. 1928 Alcoa Hwy., Suite 324 Knoxville, TN 37920	4.808 %	300
Steven L. Sterling, M.D. 2020 Kay Street Knoxville, TN 37920	4.808 %	300
Alex Stockdale 1124 Weisgarber Road Knoxville, TN 37909	1.603	100

EXHIBIT B

<u>Members</u>	<u>Capital Contributions</u>	<u>Date of Contribution</u>
Charles G. Ange, M.D.	\$10,000	April 21, 1997
L. Nichols Cook, M.D.	\$10,000	April 21, 1997
Paul D. Froula, M.D.	\$10,000	April 21, 1997
Gary N. Gitschlag, M.D.	\$10,000	April 21, 1997
Herbert J. Glatt, M.D.	\$10,000	April 21, 1997
Joseph M. Googe, M.D.	\$10,000	April 21, 1997
Robert E. Hall, M.D.	\$10,000	April 21, 1997
David J. Harris, M.D.	\$10,000	April 21, 1997
Albert K. Holmes, M.D.	\$10,000	April 21, 1997
John C. Hoskins, M.D.	\$10,000	April 21, 1997
Mark Y. Ivens, M.D.	\$10,000	April 21, 1997
James R. Kimble, M.D.	\$10,000	April 21, 1997
D. Lee McDaniel, M.D.	\$10,000	December 1, 1997
Tod A. McMillan, M.D.	\$10,000	January 1, 2000
James H. Miller, M.D.	\$10,000	April 21, 1997
J. Franklin Murchison, Jr., M.D.	\$10,000	April 21, 1997
R. Gene Price, M.D.	\$8,000	January 1, 2000
Larry G. Rauen	\$3,334	September 15, 1997
Keith A. Slater	\$3,334	September 15, 1997
Darin S. Smith, M.D.	\$10,000	January 1, 2000
Jonathan W. Sowell, M.D.	\$10,000	April 21, 1997
Steven L. Sterling, M.D.	\$10,000	April 21, 1997
Alex M. Stockdale	\$3,334	September 15, 1997

**First Amendment to Second Amended and Restated
Operating Agreement of Knoxville Eye Surgery Center, LLC**

This First Amendment to Second Amended and Restated Operating Agreement is made and entered into this 13 day of July, 2006 by and among Charles G. Ange, M.D., Marc A. Bodenheimer, M.D., L. Nichols Cook, M.D., Paul D. Froula, M.D., Herbert J. Glatt, M.D., Joseph M. Googe, M.D., Robert E. Hall, M.D., David J. Harris, M.D., Albert K. Holmes, M.D., John C. Hoskins, M.D., Mark Y. Ivens, M.D., James R. Kimble, M.D., D. Lee McDaniel, M.D., Tod A. McMillan, M.D., James H. Miller, M.D., J. Franklin Murchison, Jr., M.D., Bradley L. Pearman, M.D., R. Gene Price, M.D., Stephen L. Perkins, M.D., Darin S. Smith, M.D., Jonathan Sowell, M.D., Steven L. Sterling, M.D., Larry G. Rauen, Keith A. Slater and Alex M. Stockdale.

WITNESSETH:

WHEREAS, The Members have formed a limited liability company under the Act for the purposes of conducting certain business activities described therein; and

WHEREAS, The Members desire to amend the Operating Agreement of the Company as set forth herein; and

NOW, THEREFORE, and in consideration of the premises and the mutual promises contained herein, the Members hereby adopt this First Amendment to the Second Amended and Restated Operating Agreement (the "Agreement"):

I. The following additional paragraphs are hereby added to the Agreement:

1.43 Surgical Procedures: "Surgical Procedure" shall mean cases performed in an operating room setting.

3.3 Membership Qualifications. No Person shall be entitled to become a Member of the Company unless such Person shall be a physician licensed to practice medicine in the State of Tennessee who has completed approved training in the specialty of ophthalmology or one of the recognized subspecialties of ophthalmology, or is employed as the chief administrator of a professional corporation or professional limited liability company engaged in the practice of ophthalmology or one of the recognized subspecialties of ophthalmology. Each Member who refers patients or performs surgical procedures at the Facility certifies that his or her medical practice involves the performance of surgical procedures (as defined at 42 C.F.R. §1001.952(h)) at a hospital or other health care facility and that at least one-third (1/3) of such Member's medical practice income comes from the performance of such surgical procedures. In addition, no Person shall be entitled to become a Member of the Company or remain a Member of the Company if such Person holds any form of ownership or investment interest in any Ambulatory Surgery Center in the Geographic Area other than the Company or the Facility. If any Member invests in such Ambulatory Surgery Center, such Member shall be deemed to have offered his or

her Membership Interest for sale to the Company, which shall purchase the Membership Interest at the Agreed Price and on the Agreed Terms. Except for the Initial Members, a physician shall obtain medical staff privileges at the Facility and perform surgical procedures for a six (6) month period before being eligible to become a Member of the Company.

(a) Commencing each year Members shall be required to perform a minimum of 75 Surgical Procedures in an operating room setting at the Facility or another facility.

(b) Commencing July 2006, accounting shall be done semi-annually in January and July and shall reflect the number of Surgical Procedures for the previous 12 months (e.g., the July 2006 review would reflect the number of Surgical Procedures between July 2005 and June 2006), Surgical Procedures done at the Facility would provide initial numbers. If the number of Surgical Procedures at the Facility does not reach the annual minimum, documentation shall be required from the Member and/or other surgical facilities sufficient to reach the minimum.


(c) In the event a Member does not meet the annual minimum requirement, Member shall have the following 12 months to ensure that 75 Surgical Procedures are performed at the Facility or another facility by the Member. If during the next 12 months the Member fails to perform 75 Surgical Procedures in an operating room setting, the Member's share shall be purchased. The method for purchase shall be based on the Agreed Price set forth in Section 13.10 and the Agreed Terms set forth in Section 13.11 of the Second Amended and Restated Operating Agreement.


(d) If a Member ceases to perform Surgical Procedures, but continues to practice as a medical ophthalmologist, such Member will continue to be subject to the requirements of Section 3.3 but will not be deemed immediately subject to the provisions of Section 13.8 unless the Member also retires as a practicing medical ophthalmologist.

II All terms herein are as defined in the Second Amended and Restated Operating Agreement of Knoxville Eye Surgery Center, LLC.

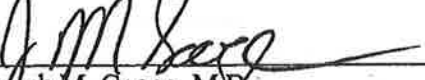
Signatures on following page


EXECUTED by each Member as of the date first written above.

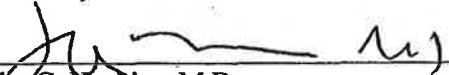

Charles G. Ange, M.D.



L. Nichols Cook, M.D.

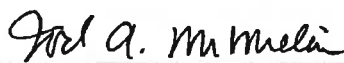

Gary N. Gitschlag, M.D.

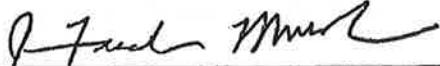

Joseph M. Googe, M.D.



David J. Harris, M.D.

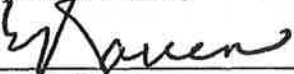

John C. Hoskins, M.D.

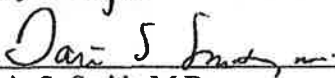

James R. Kimble, M.D. 7/13/01

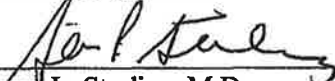

Tod A. McMillan, M.D.


J. Franklin Murchison, Jr., M.D.

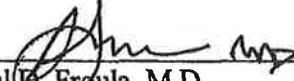

Stephen L. Perkins, M.D.

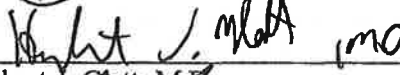

Larry G. Raven



Darin S. Smith, M.D.



Steven L. Sterling, M.D.

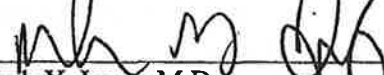

Marc A. Bodenheimer, M.D.

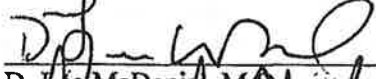

Paul B. Froula, M.D.

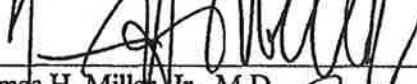

Herbert J. Glatt, M.D.



Robert E. Hall, M.D.



Albert K. Holmes, M.D.


Mark Y. Ivens, M.D.


D. Lee McDaniel, M.D.



James H. Miller, Jr., M.D.


Bradley L. Pearman, M.D.


R. Gene Price, M.D.

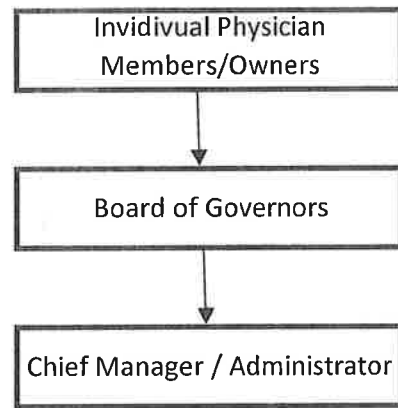

Keith A. Slater


Jonathan W. Sowell, M.D.


Alex M. Stockdale

Attachment A.4.B

**Knoxville Eye Surgery Center, LLC, d/b/a Tennessee Valley Eye Center
Organizational Chart**



Knoxville Eye Surgery Center, LLC is owned by an equal partnership of 24 Members, each of whom is a practicing surgeon in the field of Ophthalmology. The Board of Governors is elected by the Members and is responsible for governance of the Company. The Board of Governors delegates responsibility for supervising and controlling the affairs of the Company to the Chief Manager.

Knoxville Eye Surgery Center, LLC, d/b/a Tennessee Valley Eye Center
List of Owners

Partner #	Partner Name	Practice Name	Partner % of Profit Sharing	Title	Effective date of ownership	Member of Board of Governors?
1	Albert Holmes, MD	Baptist Eye Surgeons	4.1667%	MD	07/01/1999	
2	Darin S. Smith, MD	Baptist Eye Surgeons	4.1667%	MD	01/01/2000	
3	J. Franklin Murchison, MD	Baptist Eye Surgeons	4.1667%	MD	07/01/1999	Yes
4	L. Nichols Cook, MD	Baptist Eye Surgeons	4.1667%	MD	07/01/1999	Yes
5	Marc Bodenheimer, MD	Baptist Eye Surgeons	4.1667%	MD	09/01/2010	
6	Mark Y. Ivens, MD	Baptist Eye Surgeons	4.1667%	MD	07/01/1999	
7	Paul Pruett, MD	Baptist Eye Surgeons	4.1667%	MD	07/01/2016	
8	R. Gene Price, MD	Knoxville Eye Center	4.1667%	MD	01/01/2000	Yes
9	Gary N. Gitschlag, MD	Knoxville Pediatric Ophthalmology	4.1667%	MD	07/01/1999	
10	James H. Miller, MD	Southeastern Retina Associates	4.1667%	MD	07/01/1999	
11	Joseph M. Googe, MD	Southeastern Retina Associates	4.1667%	MD	07/01/1999	
12	Nicholas G. Anderson, MD	Southeastern Retina Associates	4.1667%	MD	07/01/2007	Yes
13	Robert K. Shuler, Jr., MD	Southeastern Retina Associates	4.1667%	MD	07/01/2014	
14	Stephen L. Perkins, MD	Southeastern Retina Associates	4.1667%	MD	07/01/1999	
15	Tod McMillan, MD	Southeastern Retina Associates	4.1667%	MD	01/01/2000	Yes
16	Steven L. Sterling, MD	Sterling Eye Care	4.1667%	MD	07/01/1999	
17	Bradley L. Pearman, MD	University Eye Specialists	4.1667%	MD	07/01/1999	
18	Charles G. Ange, MD	University Eye Specialists	4.1667%	MD	07/01/1999	
19	David J. Harris, MD	University Eye Specialists	4.1667%	MD	07/01/1999	
20	Herbert J. Glatt, MD	University Eye Specialists	4.1667%	MD	07/01/1999	Yes
21	James M. Rouse, MD	University Eye Specialists	4.1667%	MD	09/01/2013	
22	James T. Doss, Jr., MD	University Eye Specialists	4.1667%	MD	09/01/2013	
23	Jonathon W. Sowell, MD	University Eye Specialists	4.1667%	MD	07/01/1999	
24	Paul D. Froula, MD	University Eye Specialists	4.1667%	MD	07/01/1999	Yes

Totals

100.0%

Attachment A.6A

STEVE HALL
REGISTER OF DEEDS
KNOX COUNTY

WHEN RECORDED MAIL TO:

First Tennessee Bank National
Association
Private Client Financial Services-Knoxville
800 S. Gay Street
Knoxville, TN 37929

SEND TAX NOTICES TO:

Knoxville Eye Surgery Center, LLC, a
Tennessee Limited Liability Company
140 Capital Drive, Suite 2
Knoxville, TN 37922

OWNER:

Knoxville Eye Surgery Center, LLC, a
Tennessee Limited Liability Company
140 Capital Drive, Suite 2
Knoxville, TN 37922

FOR RECORDER'S USE ONLY

This Deed of Trust prepared by:

Name: Commercial Credit Support Center
Company: First Tennessee Bank National Association
Address: 800 S. Gay Street
City, State, ZIP: Knoxville, TN 37929

**DEED OF TRUST**

MAXIMUM PRINCIPAL INDEBTEDNESS FOR TENNESSEE RECORDING TAX PURPOSES IS \$3,125,703.75

THIS DEED OF TRUST is dated January 22, 2004, among Knoxville Eye Surgery Center, LLC, a Tennessee Limited Liability Company, whose address is 140 Capital Drive, Suite 2, Knoxville, TN 37922 ("Grantor"); First Tennessee Bank National Association, whose address is Private Client Financial Services-Knoxville, 800 S. Gay Street, Knoxville, TN 37929 (referred to below sometimes as "Lender" and sometimes as "Beneficiary"); and J. Michael Winchester, whose address is 800 S. Gay Street, Suite 1000, Knoxville, TN 37929 (referred to below as "Trustee").

CONVEYANCE AND GRANT. For and in consideration of Five Dollars (\$5.00) cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor has bargained and sold, and does hereby bargain, sell, convey and confirm unto the Trustee in trust, with Power of Sale, for the benefit of Lender as Beneficiary, all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in Knox County, State of Tennessee:

See Exhibit "A", which is attached to this Deed of Trust and made a part of this Deed of Trust as if fully set forth herein.

The Real Property or its address is commonly known as 140 Capital Drive, Knoxville, TN 37922. The Real Property tax identification number is 131LB-005.

CROSS-COLLATERALIZATION. In addition to the Note, this Deed of Trust secures all obligations, debts and liabilities, plus interest thereon, of Grantor to Lender, or any one or more of them, as well as all claims by Lender against Grantor or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated whether Grantor may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable.

Grantor presently assigns to Lender (also known as Beneficiary in this Deed of Trust) all of Grantor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

Inst: 200401220071559 Page: 1 of 10
REC'D FOR REC 01/22/2004 2:31:43PM
RECORD FEE: \$53.00
M. TAX: \$3692.26 T. TAX: \$0.00

Loan No: 30017240

**DEED OF TRUST
(Continued)**

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PAYMENT AND PERFORMANCE. Except as otherwise provided in this Deed of Trust, Grantor shall pay to Lender all amounts secured by this Deed of Trust as they become due, and shall strictly and in a timely manner perform all of Grantor's obligations under the Note, this Deed of Trust, and the Related Documents.

POSSESSION AND MAINTENANCE OF THE PROPERTY. Grantor agrees that Grantor's possession and use of the Property shall be governed by the following provisions:

Possession and Use. Until the occurrence of an Event of Default, Grantor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property.

Duty to Maintain. Grantor shall maintain the Property in tenable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

Compliance With Environmental Laws. Grantor represents and warrants to Lender that: (1) During the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (3) Except as previously disclosed to and acknowledged by Lender in writing, (a) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Grantor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Grantor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Deed of Trust. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Property for Hazardous Substances. Grantor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws; and (2) agrees to indemnify and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Deed of Trust or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Grantor's ownership or interest in the Property, whether or not the same was or should have been known to Grantor. The provisions of this section of the Deed of Trust, including the obligation to indemnify, shall survive the payment of the indebtedness and the satisfaction and reconveyance of the lien of this Deed of Trust and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

Without otherwise limiting Grantor's covenants as provided herein, Grantor shall not without Lender's prior written consent, remove or permit the removal of sand, gravel or topsoil, or engage in borrow pit operations, or use or permit the use of the Property as a land fill or dump, or store, burn or bury or permit the storage, burning or burying of any material or product which may result in contamination of the Property or the groundwater or which may require the issuance of a permit by the Environmental Protection Agency or any state or local government agency governing the issuance of hazardous or toxic waste permits, or request or permit a change in zoning or land use classification, or cut or remove or suffer the cutting or removal of any trees or timber from the Property.

At its sole cost and expense, Grantor shall comply with and shall cause all occupants of the Property to comply with all Environmental Laws with respect to the disposal of industrial refuse or waste, and/or the discharge, processing, manufacture, generation, treatment, removal, transportation, storage and handling of Hazardous Substances, and pay immediately when due the cost of removal of any such wastes or substances from, and keep the Property free of any lien imposed pursuant to such laws, rules, regulations and orders.

Grantor shall not install or permit to be installed in or on the Property, friable asbestos or any substance containing asbestos and deemed hazardous by federal, state or local laws, rules, regulations or orders respecting such material. Grantor shall further not install or permit the installation of any machinery, equipment or fixtures containing polychlorinated biphenyls (PCBs) on or in the Property. With respect to any such material or materials currently present in or on the Property, Grantor shall promptly comply with all applicable Environmental Laws regarding the safe removal thereof, at Grantor's expense.

Grantor shall indemnify Lender and hold Lender harmless from and against all loss, cost, damage and expense (including, without limitation, attorneys' fees and costs incurred in the investigation, defense and settlement of claims) that Lender may incur as a result of or in connection with the assertion against Lender of any claim relating to the presence or removal of any Hazardous Substance, or compliance with any Environmental Law. No notice from any governmental body has ever been served upon Grantor or, to Grantor's knowledge after due inquiry, upon any prior owner of the Property, claiming a violation of or under any Environmental Law or concerning the environmental state, condition or quality of the Property, or the use thereof, or requiring or calling attention to the need for any work, repairs, construction, removal, cleanup, alterations, demolition, renovation or installation on, or in connection with, the Property in order to comply with any Environmental Law, and upon receipt of any such notice, Grantor shall take any and all steps, and shall perform any and all actions necessary or appropriate to comply with the same, at Grantor's expense. In the event Grantor fails to do so, Lender may declare this Deed of Trust to be in default.

Nuisance, Waste. Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent.

Removal of Improvements. Grantor shall not demolish or remove any improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such improvements with improvements of at least equal value.

Lender's Right to Enter. Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Grantor's compliance with the terms and conditions of this Deed of Trust.

Compliance with Governmental Requirements. Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans With Disabilities Act. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

Duty to Protect. Grantor agrees neither to abandon or leave unattended the Property. Grantor shall do all other acts, in



DEED OF TRUST (Continued)

Loan No: 30017240

Page 3

addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

DUE ON SALE - CONSENT BY LENDER: Lender may, at Lender's option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. If any Grantor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of such Grantor. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by Tennessee law.

TAXES AND LIENS. The following provisions relating to the taxes and liens on the Property are part of this Deed of Trust:

Payment. Grantor shall pay when due (and in all events prior to delinquency) all taxes, special taxes, assessments, charges (including water and sewer), fines and impositions levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of all liens having priority over or equal to the interest of Lender under this Deed of Trust, except for the lien of taxes and assessments not due and except as otherwise provided in this Deed of Trust.

Right to Contest. Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing; secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

Evidence of Payment. Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

Notice of Construction. Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialman's lien, or other lien could be asserted on account of the work, services, or materials and the cost exceeds \$10,000.00. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

PROPERTY DAMAGE INSURANCE. The following provisions relating to insuring the Property are a part of this Deed of Trust.

Maintenance of Insurance. Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgage clause in favor of Lender. Grantor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Lender may request with Trustee and Lender being named as additional insureds in such liability insurance policies. Additionally, Grantor shall maintain such other insurance, including but not limited to hazard, business interruption, and boiler insurance, as Lender may reasonably require. Policies shall be written in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. All policies shall provide that the policies shall not be invalidated by any waiver of the right of subrogation by any insured, and shall provide that the carrier shall have no right to be subrogated to Lender. Grantor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least thirty (30) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance, if available, within 45 days after notice is given by Lender that the Property is located in a special flood hazard area, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

Application of Proceeds. Grantor shall promptly notify Lender of any loss of damage to the Property if the estimated cost of repair or replacement exceeds \$1,000.00. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Deed of Trust. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Deed of Trust, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the indebtedness. If Lender holds any proceeds after payment in full of the indebtedness, such proceeds shall be paid to Grantor as Grantor's interests may appear.

Unexpired Insurance at Sale. Any unexpired insurance shall inure to the benefit of, and pass to, the purchaser of the Property covered by this Deed of Trust at any trustee's sale or other sale held under the provisions of this Deed of Trust, or at any foreclosure sale of such Property.

Grantor's Report on Insurance. Upon request of Lender, however not more than once a year, Grantor shall furnish to Lender a report on each existing policy of insurance showing: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured, the then current replacement value of such property, and the manner of determining that value; and (5) the expiration date of the policy. Grantor shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value replacement cost of the Property.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantor fails to comply with any provision of this Deed of Trust or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Deed of Trust or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the



Instr: 200401220071564
PAGE: 3 OF 10

Loan No: 30017240

**DEED OF TRUST
(Continued)**

Page 4

date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Deed of Trust also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

WARRANTY; DEFENSE OF TITLE. The following provisions relating to ownership of the Property are a part of this Deed of Trust:

Title. Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Deed of Trust; and (b) Grantor has the full right, power, and authority to execute and deliver this Deed of Trust to Lender.

Defense of Title. Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Trustee or Lender under this Deed of Trust, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

Compliance With Laws. Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

Survival of Representations and Warranties. All representations, warranties, and agreements made by Grantor in this Deed of Trust shall survive the execution and delivery of this Deed of Trust, shall be continuing in nature, and shall remain in full force and effect until such time as Grantor's indebtedness shall be paid in full.

CONDEMNATION. The following provisions relating to condemnation proceedings are a part of this Deed of Trust:

Notice of Proceedings. Grantor shall immediately notify Lender in writing should all or any part of the Property become subject to any condemnation or expropriation proceedings or other similar proceedings, including without limitation, any condemnation, confiscation, eminent domain, inverse condemnation or temporary requisition or taking of the mortgaged Property, or any part or parts of the Property. Grantor further agrees to promptly take such steps as may be necessary and proper within Lender's sole judgment and at Grantor's expense, to defend any such condemnation or expropriation proceedings and obtain the proceeds derived from such proceedings. Grantor shall not agree to any settlement or compromise or any condemnation or expropriation claim without Lender's prior written consent.

Lender's Participation. Lender may, at Lender's sole option, elect to participate in any such condemnation or expropriation proceedings and be represented by counsel of Lender's choice. Grantor agrees to provide Lender with such documentation as Lender may request to permit Lender to so participate and to reimburse Lender for Lender's costs associated with Lender's participation, including Lender's reasonable attorneys' fees.

Conduct of Proceedings. If Grantor fails to defend any such condemnation or expropriation proceedings to Lender's satisfaction, Lender may undertake the defense of such a proceeding for and on behalf of Grantor. To this end, Grantor irrevocably appoints Lender as Grantor's agent and attorney-in-fact, such agency being coupled with an interest, to bring, defend, adjudicate, settle, or otherwise compromise such condemnation or expropriation claims; it being understood, however, that, unless one or more Events of Default (other than the condemnation or expropriation of the Property) then exists under this Deed of Trust, Lender will not agree to any final settlement or compromise of any such condemnation or expropriation claim without Grantor's prior approval, which approval shall not be unreasonably withheld.

Application of Net Proceeds. Lender shall have the right to receive all proceeds derived or to be derived from the condemnation, expropriation, confiscation, eminent domain, inverse condemnation, or any permanent or temporary requisition or taking of the Property, or any part or parts of the Property ("condemnation proceeds"). In the event that Grantor should receive any such condemnation proceeds, Grantor agrees to immediately turn over and to pay such proceeds to Lender. All condemnation proceeds, which are received by, or which are payable to either Grantor or Lender, shall be applied, at Lender's sole option and discretion, and in such manner as Lender may determine (after payment of all reasonable costs, expenses and attorneys' fees necessarily paid or incurred by Grantor and/or Lender), for the purpose of: (a) replacing or restoring the condemned, expropriated, confiscated, or taken Property; or (b) reducing the then outstanding balance of the indebtedness, together with interest thereon, with such payments being applied in the manner provided in this Deed of Trust. Lender's receipt of such condemnation proceeds and the application of such proceeds as provided in this Deed of Trust shall not affect the lien of this Deed of Trust.

IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES. The following provisions relating to governmental taxes, fees and charges are a part of this Deed of Trust:

Current Taxes, Fees and Charges. Upon request by Lender, Grantor shall execute such documents in addition to this Deed of Trust and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Deed of Trust, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Deed of Trust.

Taxes. The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Deed of Trust or upon all or any part of the indebtedness secured by this Deed of Trust; (2) a specific tax on Grantor which Grantor is authorized or required to deduct from payments on the indebtedness secured by this type of Deed of Trust; (3) a tax on this type of Deed of Trust chargeable against the Lender or the holder of the Note; and (4) a specific tax on all or any portion of the indebtedness or on payments of principal and interest made by Grantor.

Subsequent Taxes. If any tax to which this section applies is enacted subsequent to the date of this Deed of Trust, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either (1) pays the tax before it becomes delinquent, or (2) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

SECURITY AGREEMENT; FINANCING STATEMENTS. The following provisions relating to this Deed of Trust as a security agreement are a part of this Deed of Trust:

Security Agreement. This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

Security Interest. Upon request by Lender, Grantor shall execute financing statements and take whatever other action is requested by Lender to perfect and continue Lender's security interest in the Real and Personal Property. In addition to recording this Deed of Trust in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Deed of Trust as a financing statement. Grantor shall

DEED OF TRUST **(Continued)**

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reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall not remove, sever or detach the Personal Property from the Property. Upon default, Grantor shall assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

Addresses. The mailing addresses of Grantor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Deed of Trust may be obtained (each as required by the Uniform Commercial Code) are as stated on the first page of this Deed of Trust.

FURTHER ASSURANCES: ATTORNEY-IN-FACT. The following provisions relating to further assurances and attorney-in-fact are a part of this Deed of Trust:

Further Assurances. At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refilled, or rerecorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Grantor's obligations under the Note, this Deed of Trust, and the Related Documents, and (2) the liens and security interests created by this Deed of Trust as first and prior liens on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or Lender agrees to the contrary in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

Attorney-in-Fact. If Grantor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

FULL PERFORMANCE. If Grantor shall well and truly pay and perform the obligations at the time and times, and in the manner mentioned in this Deed of Trust, and shall well and truly abide by and comply with each and every term, covenant and condition set forth in this Deed of Trust, then this conveyance shall be and become null and void and the Trustee shall convey the Property to the Grantor by release deed at Grantor's expense.

EVENTS OF DEFAULT. Each of the following, at Lender's option, shall constitute an Event of Default under this Deed of Trust:

Payment Default. Grantor fails to make any payment when due under the Indebtedness.

Other Defaults. Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Deed of Trust or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Grantor.

Compliance Default. Failure to comply with any other term, obligation, covenant or condition contained in this Deed of Trust, the Note or in any of the Related Documents. If such a failure is curable and if Grantor has not been given a notice of a breach of the same provision of this Deed of Trust within the preceding twelve (12) months, it may be cured (and no Event of Default will have occurred) if Grantor, after Lender sends written notice demanding cure of such failure: (a) cures the failure within fifteen (15) days; or (b) if the cure requires more than fifteen (15) days, immediately initiates steps sufficient to cure the failure and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

Default on Other Payments. Failure of Grantor within the time required by this Deed of Trust to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

Default in Favor of Third Parties. Should Grantor default under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Grantor's property or Grantor's ability to repay the Indebtedness or perform their respective obligations under this Deed of Trust or any of the Related Documents.

False Statements. Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf, or made by Grantor, or any other guarantor, endorser, surety, or accommodation party, under this Deed of Trust or the Related Documents in connection with the obtaining of the Indebtedness evidenced by the Note or any security document directly or indirectly securing repayment of the Note is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Defective Collateralization. This Deed of Trust or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Death or Insolvency. The dissolution of Grantor's (regardless of whether election to continue is made), any member withdraws from the limited liability company, or any other termination of Grantor's existence as a going business or the death of any member, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

Creditor or Foreclosure Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any property securing the Indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or foreclosure proceeding and if Grantor gives Lender written notice of the creditor or foreclosure proceeding and deposits with Lender monies or a surety bond for the creditor or foreclosure proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Execution Attachment. Any execution or attachment is levied against the Property, and such execution or attachment is not set aside, discharged or stayed within thirty (30) days after the same is levied.

Change in Zoning or Public Restriction. Any change in any zoning ordinance or regulation or any other public restriction is enacted, adopted or implemented, that limits or defines the uses which may be made of the Property such that the present or intended use of the Property, as specified in the Related Documents, would be in violation of such zoning ordinance or regulation or public restriction, as changed.

Default Under Other Lien Documents. A default occurs under any other mortgage, deed of trust or security agreement covering all or any portion of the Property.

Judgment. Unless adequately covered by insurance in the opinion of Lender, the entry of a final judgment for the payment of money involving more than ten thousand dollars (\$10,000.00) against Grantor and the failure by Grantor to discharge the same, or cause it to be discharged, or bonded off to Lender's satisfaction, within thirty (30) days from the date of the order,

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decree or process under which or pursuant to which such judgment was entered.

Breach of Other Agreement. Any breach by Grantor under the terms of any other agreement between Grantor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Grantor to Lender, whether existing now or later.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor, or any other guarantor, endorser, surety, or accommodation party of any of the indebtedness or any Guarantor, or any other guarantor, endorser, surety, or accommodation party dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the indebtedness. In the event of a death, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

Adverse Change. A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the indebtedness is impaired.

Right to Cure. If such a failure is curable and if Grantor has not been given a notice of a breach of the same provision of this Deed of Trust within the preceding twelve (12) months, it may be cured (and no Event of Default will have occurred) if Grantor, after Lender sends written notice demanding cure of such failure: (a) cures the failure within fifteen (15) days; or (b) if the cure requires more than fifteen (15) days, immediately initiates steps sufficient to cure the failure and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

RIGHTS AND REMEDIES ON DEFAULT. If an Event of Default occurs under this Deed of Trust, at any time thereafter, Trustee or Lender may exercise any one or more of the following rights and remedies:

Election of Remedies. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Deed of Trust, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

Accelerate Indebtedness. Lender shall have the right at its option without notice to Grantor, the same being expressly waived, to declare the entire indebtedness immediately due and payable, including (if permitted by applicable law) any prepayment penalty for which Grantor may be obligated.

Foreclosure. With respect to all or any part of the Real Property, (a) the Trustee, at the Lender's request, shall have the right to enter and take possession of the Real Property and to sell all or part of the Real Property, at public auction, to the highest bidder for cash, free from equity of redemption, and any statutory or common law right of redemption, homestead, dower, marital share, and all other exemptions, after giving notice of the time, place and terms of such sale and of the Real Property to be sold as required by law; or (b) the Trustee or the Lender shall have the right to foreclose by judicial proceeding, in accordance with and to the full extent provided by applicable law.

UCC Remedies. With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

Collect Rents. Lender shall have the right, without notice to Grantor to take possession of and manage the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

Appoint Receiver. Lender shall have the right to make application to a court of competent jurisdiction to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property prior to foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the indebtedness. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property, proceed to foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

Tenancy at Sufferance. If Grantor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (1) pay a reasonable rental for the use of the Property, or (2) vacate the Property immediately upon the demand of Lender.

Other Remedies. Trustee or Lender shall have any other right or remedy provided in this Deed of Trust or the Note or by law.

Notice of Sale. Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition. Any sale of the Personal Property may be made in conjunction with any sale of the Real Property.

Sale of the Property. To the extent permitted by applicable law, Grantor hereby waives any and all rights to have the Property marshalled, the equity of redemption, any statutory or common law right of redemption, homestead, dower, marital share and all other exemptions and other rights which might defeat, reduce or affect the right of the Lender to sell the Real Property or the Personal Property for the collection of the indebtedness. Lender shall give notice to Grantor prior to acceleration following Grantor's breach of any covenant or agreement in this Deed of Trust. The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than thirty (30) days from the date the notice is given to Grantor, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph, including but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Trustee shall give notice of sale by public advertisement in the county in which the Property is located for the time and in the manner provided by applicable law, and Lender or Trustee shall mail a copy of the notice of sale to Grantor. Trustee, without demand on Grantor, shall sell the Property at public auction to the highest bidder at the time and under the terms designated in the notice of sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying that Real Property without any covenant or warranty,



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express or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it. If the Property is sold pursuant to this paragraph, Grantor, or any person holding possession of the Real Property through Grantor, shall immediately surrender possession of the Real Property to the purchaser at the sale. If possession is not surrendered, Grantor or such person shall be a tenant at will of the purchaser and hereby agrees to pay the purchaser the reasonable rental value of the Real Property after sale.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Deed of Trust, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

Rights of Trustee. Trustee shall have all of the rights and duties of Lender as set forth in this section.

POWERS AND OBLIGATIONS OF TRUSTEE. The following provisions relating to the powers and obligations of Trustee are part of this Deed of Trust:

Powers of Trustee. In addition to all powers of Trustee arising as a matter of law, Trustee shall have the power to take the following actions with respect to the Property upon the written request of Lender and Grantor: (a) join in preparing and filing a map or plat of the Real Property, including the dedication of streets or other rights to the public; (b) join in granting any easement or creating any restriction on the Real Property; and (c) join in any subordination or other agreement affecting this Deed of Trust or the interest of Lender under this Deed of Trust.

Indemnification of Trustee. Grantor agrees to indemnify Trustee for all reasonable costs, charges, and attorneys' fees incurred by Trustee if Trustee is made a party to or intervenes in any action or proceeding affecting the Property, the title to the Property, or the interest of the Trustee or the Lender under this Deed of Trust.

Obligations to Notify. Trustee shall not be obligated to notify any other party of a pending sale under any other trust deed or lien, or of any action or proceeding in which Grantor, Lender, or Trustee shall be a party, unless the action or proceeding is brought by Trustee.

Trustee. Trustee shall meet all qualifications required for Trustee under applicable law. In addition to the rights and remedies set forth above, with respect to all or any part of the Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law. Trustee shall have the authority, in Trustee's discretion, to employ all proper agents and attorneys in the execution of Trustee's duties under this Deed of Trust and in conducting any sale made pursuant to the terms of this Deed of Trust and to pay for the services rendered by such agents and attorneys out of the proceeds of the sale of the Property. If no sale is made, or if the proceeds of the sale are insufficient to pay such agents and attorneys, then Grantor agrees to pay the cost of such services. The parties in interest hereby waive the necessity of Trustee making oath, filing inventory, or giving bond as security for the execution of this trust, as may be required by the laws of Tennessee.

Successors and Assigns. In the event of the death, refusal, or of inability for any cause, on the part of Trustee named in this Deed of Trust, or of any successor trustee, to act at any time when action under the foregoing powers and trust may be required, or for any other reason satisfactory to Lender, Lender is authorized, either in Lender's own name or through an attorney or attorneys, in fact appointed for that purpose, by written instrument duly registered, to name and appoint a successor or successors to execute this trust, such appointment to be evidenced by writing, duly acknowledged; and when such writing shall have been registered, the substituted trustee named therein shall thereupon be vested with all the right and title, and clothed with all the power of the Trustee named in this Deed of Trust and such like power of substitution shall continue so long as any part of the debt secured by this Deed of Trust remains unpaid.

NOTICES. Any notice required to be given under this Deed of Trust, including without limitation any notice of default and any notice of sale shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Deed of Trust. All copies of notices of foreclosure from the holder of any lien which has priority over this Deed of Trust shall be sent to Lender's address, as shown near the beginning of this Deed of Trust. Any party may change its address for notices under this Deed of Trust by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

EXCLUSION FROM INDEBTEDNESS. Excluded from indebtedness shall be any indebtedness governed by the Federal Truth in Lending Act.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Deed of Trust:

Amendments. This Deed of Trust, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Deed of Trust. No alteration or amendment to this Deed of Trust shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Annual Reports. If the Property is used for purposes other than Grantor's residence, Grantor shall furnish to Lender, upon request, a certified statement of net operating income received from the Property during Grantor's previous fiscal year in such form and detail as Lender shall require. "Net operating income" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

Caption Headings. Caption headings in this Deed of Trust are for convenience purposes only and are not to be used to interpret or define the provisions of this Deed of Trust.

Merger. There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Deed of Trust unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Deed of Trust shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Deed of Trust. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver

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of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Deed of Trust, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Severability. If a court of competent jurisdiction finds any provision of this Deed of Trust to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Deed of Trust. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Deed of Trust shall not affect the legality, validity or enforceability of any other provision of this Deed of Trust.

Non-Liability of Lender. The relationship between Grantor and Lender created by this Deed of Trust is strictly a debtor and creditor relationship and not fiduciary in nature, nor is the relationship to be construed as creating any partnership or joint venture between Lender and Grantor. Grantor is exercising Grantor's own judgment with respect to Grantor's business. All information supplied to Lender is for Lender's protection only and no other party is entitled to rely on such information. There is no duty for Lender to review, inspect, supervise or inform Grantor of any matter with respect to Grantor's business. Lender and Grantor intend that Lender may reasonably rely on all information supplied by Grantor to Lender, together with all representations and warranties given by Grantor to Lender, without investigation or confirmation by Lender and that any investigation or failure to investigate will not diminish Lender's right to so rely.

Sole Discretion of Lender. Whenever Lender's consent or approval is required under this Deed of Trust, the decision as to whether or not to consent or approve shall be in the sole and exclusive discretion of Lender and Lender's decision shall be final and conclusive.

Successors and Assigns. Subject to any limitations stated in this Deed of Trust on transfer of Grantor's interest, this Deed of Trust shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Deed of Trust and the indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Deed of Trust or liability under the indebtedness.

Time is of the Essence. Time is of the essence in the performance of this Deed of Trust.

Waive Jury. All parties to this Deed of Trust hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

Miscellaneous Waivers. Grantor waives all right of homestead, equity of redemption, statutory right of redemption, and relinquishes all other rights and exemptions of every kind, including, but not limited to, a statutory right to an elective share in the Property.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Deed of Trust. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Deed of Trust shall have the meanings attributed to such terms in the Uniform Commercial Code:

Beneficiary. The word "Beneficiary" means First Tennessee Bank National Association, and its successors and assigns.

Borrower. The word "Borrower" means Knoxville Eye Surgery Center, LLC, a Tennessee Limited Liability Company and includes all co-signers and co-makers signing the Note.

Deed of Trust. The words "Deed of Trust" mean this Deed of Trust among Grantor, Lender, and Trustee, and includes without limitation all assignment and security interest provisions relating to the Personal Property and Rents.

Default. The word "Default" means the Default set forth in this Deed of Trust in the section titled "Default".

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the Hazardous Waste Management Substances Act of 1986, T.C.A., 68-212-201, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words "Event of Default" mean individually, collectively, and interchangeably any of the events of default set forth in this Deed of Trust in the events of default section of this Deed of Trust.

Grantor. The word "Grantor" means Knoxville Eye Surgery Center, LLC, a Tennessee Limited Liability Company.

Guarantor. The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Indebtedness, and, in each case, Grantor's successors, assigns, heirs, personal representatives, executors and administrators of any guarantor, surety, or accommodation party.

Guaranty. The word "Guaranty" means the guaranty from Guarantor, or any other guarantor, endorser, surety, or accommodation party to Lender, including without limitation a guaranty of all or part of the Note.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Improvements. The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

Indebtedness. The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Trustee or Lender to enforce Grantor's obligations under this Deed of Trust, together with interest on such amounts as provided in this Deed of Trust. Specifically, without limitation, indebtedness includes all amounts that may be indirectly secured by the Cross-Collateralization provision of this Deed of Trust.

Lender. The word "Lender" means First Tennessee Bank National Association, its successors and assigns.

Note. The word "Note" means the promissory note dated January 22, 2004, in the original principal amount of \$3,126,703.75 from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of,



EXHIBIT A

SITUATED in District No. Six (6) of Knox County, Tennessee, and being Lot 5.00 of the One Lot Subdivision of Capital Court, Unit 2, as shown by map of record in Map Cabinet P, Slide 211B, in the Knox County Register's Office, said lot being more particularly bounded and described as follows:

BEGINNING at an existing iron rod in the easterly line of Capital Drive, said iron rod marking the common corner between the property herein described and Lot 4 of Capital Court, Unit 1; thence from said point of BEGINNING with the line of Lot 4, North 65 deg. 01 min. 07 sec. East, 227.49 feet to an existing iron rod corner to Franklin Hill Subdivision; thence with Franklin Hill Subdivision, South 23 deg. 07 min. 00 sec. East, 586.17 feet to an existing iron rod; thence South 06 deg. 26 min. 12 sec. East, 80.33 feet to an iron rod corner to F. S. Foster (Deed Book 1234, page 512); thence with the line of Foster, North 79 deg. 45 min. 09 sec. West, 115.59 feet to a point; thence South 77 deg. 55 min. 02 sec. West, 181.90 feet to an iron rod corner to Lot 5.01; thence with the line of Lot 5.01, North 23 deg. 07 min. 00 sec. West, 365.74 feet to an iron rod; thence continuing with Lot 5.01, North 60 deg. 08 min. 48 sec. West, 50.00 feet to an iron rod in the Eastern line of Capital Drive; thence with the Eastern line of Capital Drive along the arc of a curve to the left, having a radius of 275.00 feet, a chord bearing and distance of North 10 deg. 30 min. 43 sec. East, 182.16 feet, and an arc distance of 185.66 feet to the point of BEGINNING.

The foregoing description was prepared from the subdivision plat prepared by Gary C. Clark, RLS No. 1329. The surveyor's address is Barge, Waggoner, Sumner & Cannon, 2400 First Tennessee Plaza, Knoxville, TN 37929.

BEING part of the same property conveyed to Knoxville Eye Surgery Center, LLC, a Tennessee limited liability company, by Warranty Deed from Capital Court Venture, dated June 26, 1998, of record in Deed Book 2290, page 1075, in the Knox County Register's Office.



STEVE HALL
REGISTER OF DEEDS
KNOX COUNTY

WHEN RECORDED MAIL TO:

First Tennessee Bank National
Association
Private Client Financial Services-Knoxville
800 S. Gay Street
Knoxville, TN 37929

SEND TAX NOTICES TO:

Knoxville Eye Surgery Center, LLC, a
Tennessee Limited Liability Company
140 Capital Drive, Suite 2
Knoxville, TN 37922

OWNER:

Knoxville Eye Surgery Center, LLC, a
Tennessee Limited Liability Company
140 Capital Drive, Suite 2
Knoxville, TN 37922

FOR RECORDER'S USE ONLY

This ASSIGNMENT OF RENTS prepared by:

Name: Commercial Credit Support Center
Company: First Tennessee Bank National Association
Address: 800 S. Gay Street
City, State, ZIP: Knoxville, TN 37929

**ASSIGNMENT OF RENTS****MAXIMUM PRINCIPAL INDEBTEDNESS FOR TENNESSEE RECORDING TAX PURPOSES IS \$0.00**

THIS ASSIGNMENT OF RENTS dated January 22, 2004, is made and executed between Knoxville Eye Surgery Center, LLC, a Tennessee Limited Liability Company, whose address is 140 Capital Drive, Suite 2, Knoxville, TN 37922 (referred to below as "Grantor") and First Tennessee Bank National Association, whose address is 800 S. Gay Street, Knoxville, TN 37929 (referred to below as "Lender").

ASSIGNMENT. For valuable consideration, Grantor hereby assigns, grants a continuing security interest in, and conveys to Lender all of Grantor's right, title, and interest in and to the Rents from the following described Property located in Knox County, State of Tennessee:

See Exhibit "A", which is attached to this Assignment and made a part of this Assignment as if fully set forth herein.

The Property or its address is commonly known as 140 Capital Drive, Knoxville, TN 37922. The Property tax identification number is 131LB-005

This is a present, unconditional and absolute assignment of the Rents from the Property.

CROSS-COLLATERALIZATION. In addition to the Note, this Assignment secures all obligations, debts and liabilities, plus interest thereon, of Grantor to Lender, or any one or more of them, as well as all claims by Lender against Grantor or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated whether Grantor may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable.

THIS ASSIGNMENT IS GIVEN TO SECURE (1) PAYMENT OF THE INDEBTEDNESS AND (2) PERFORMANCE OF ANY AND ALL OBLIGATIONS OF GRANTOR UNDER THE NOTE, THIS ASSIGNMENT, AND THE RELATED DOCUMENTS. THIS ASSIGNMENT IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Assignment or any Related Documents, Grantor shall pay to Lender all amounts secured by this Assignment as they become due, and shall strictly perform all of Grantor's obligations under this Assignment. Unless and until Lender exercises its right to collect the Rents as provided below and so long as there is no default under this Assignment, Grantor may remain in possession and control of and operate and manage the Property and collect the Rents, provided that the granting of the right to collect the Rents shall not constitute Lender's consent to the use of cash collateral in a bankruptcy proceeding.

GRANTOR'S REPRESENTATIONS AND WARRANTIES. Grantor warrants that:

Instr: 200401220071502 Page: 1 OF 6
REC'D FOR REC 01/22/2004 2:34:44PM
RECORD FEE: \$32.00
M. TAX: \$0.00 T. TAX: \$0.00

ASSIGNMENT OF RENTS **(Continued)**

Loan No: 30017240

Page 3

death of any member, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

Creditor or Foreclosure Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against the Rents or any property securing the Indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or foreclosure proceeding and if Grantor gives Lender written notice of the creditor or foreclosure proceeding and deposits with Lender monies or a surety bond for the creditor or foreclosure proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Execution; Attachment. Any execution or attachment is levied against the Property, and such execution or attachment is not set aside, discharged or stayed within thirty (30) days after the same is levied.

Change in Zoning or Public Restriction. Any change in any zoning ordinance or regulation or any other public restriction is enacted, adopted or implemented, that limits or defines the uses which may be made of the Property such that the present or intended use of the Property, as specified in the Related Documents, would be in violation of such zoning ordinance or regulation or public restriction, as changed.

Default Under Other Lien Documents. A default occurs under any other mortgage, deed of trust or security agreement covering all or any portion of the Property.

Judgment. Unless adequately covered by insurance in the opinion of Lender, the entry of a final judgment for the payment of money involving more than ten thousand dollars (\$10,000.00) against Grantor and the failure by Grantor to discharge the same, or cause it to be discharged, or bonded off to Lender's satisfaction, within thirty (30) days from the date of the order, decree or process under which or pursuant to which such judgment was entered.

Property Damage or Loss. The Property is lost, stolen, substantially damaged, sold, or borrowed against.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor, or any other guarantor, endorser, surety, or accommodation party of any of the Indebtedness or any Guarantor, or any other guarantor, endorser, surety, or accommodation party dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness. In the event of a death, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

Adverse Change. A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

Cure Provisions. If any default, other than a default in payment is curable and if Grantor has not been given a notice of a breach of the same provision of this Assignment within the preceding twelve (12) months, it may be cured (and no event of default will have occurred) if Grantor, after receiving written notice from Lender demanding cure of such default: (1) cures the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

RIGHTS AND REMEDIES ON DEFAULT. Upon the occurrence of any Event of Default and at any time thereafter, Lender may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

Accelerate Indebtedness. Lender shall have the right at its option without notice to Grantor, the same being expressly waived, to declare the entire Indebtedness immediately due and payable, including (if permitted by applicable law) any prepayment penalty which Grantor would be required to pay.

Collect Rents. Lender shall have the right, without notice to Grantor, to take possession of the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender shall have all the rights provided for in the Lender's Right to Receive and Collect Rents Section, above. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

Appoint Receiver. Lender shall have the right to make application to a court of competent jurisdiction to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property prior to foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

Other Remedies. Lender shall have all other rights and remedies provided in this Assignment or the Note or by law.

Election of Remedies. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Assignment, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Assignment, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

EXCLUSION FROM INDEBTEDNESS. Excluded from indebtedness shall be any Indebtedness governed by the Federal Truth in Lending Act.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Assignment:

ASSIGNMENT OF RENTS (Continued)

Loan No: 30017240

Page 5

Event of Default. The words "Event of Default" mean individually, collectively, and interchangeably any of the events of default set forth in this Assignment in the default section of this Assignment.

Grantor. The word "Grantor" means Knoxville Eye Surgery Center, LLC, a Tennessee Limited Liability Company.

Guarantor. The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Indebtedness, and, in each case, Grantor's successors, assigns, heirs, personal representatives, executors and administrators of any guarantor, surety, or accommodation party.

Guaranty. The word "Guaranty" means the guaranty from Guarantor, or any other guarantor, endorser, surety, or accommodation party to Lender, including without limitation a guaranty of all or part of the Note.

Indebtedness. The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Lender to enforce Grantor's obligations under this Assignment, together with interest on such amounts as provided in this Assignment. Specifically, without limitation, Indebtedness includes all amounts that may be indirectly secured by the Cross-Collateralization provision of this Assignment.

Lender. The word "Lender" means First Tennessee Bank National Association, its successors and assigns.

Note. The word "Note" means the promissory note dated January 22, 2004, in the original principal amount of \$3,125,703.75 from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement.

Property. The word "Property" means all of Grantor's right, title and interest in and to all the Property as described in the "Assignment" section of this Assignment.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

Rents. The word "Rents" means all of Grantor's present and future rights, title and interest in, to and under any and all present and future leases, including, without limitation, all rents, revenue, income, issues, royalties, bonuses, accounts receivable, cash or security deposits, advance rentals, profits and proceeds from the Property, and other payments and benefits derived or to be derived from such leases of every kind and nature, whether due now or later, including without limitation Grantor's right to enforce such leases and to receive and collect payment and proceeds thereunder.

THE UNDERSIGNED ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS ASSIGNMENT, AND NOT PERSONALLY BUT AS AN AUTHORIZED SIGNER, HAS CAUSED THIS ASSIGNMENT TO BE SIGNED AND EXECUTED ON BEHALF OF GRANTOR ON JANUARY 22, 2004.

GRANTOR:

KNOXVILLE EYE SURGERY CENTER, LLC, A TENNESSEE LIMITED LIABILITY COMPANY

By: Lawrence G. Reuen
Lawrence G. Reuen, Chief Manager of Knoxville Eye Surgery Center, LLC, a
Tennessee Limited Liability Company

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF TN)
) SS
COUNTY OF KNOX)

Before me, DAVID W. RECTOR, a Notary Public in and for State and County, personally appeared Lawrence G. Reuen, Chief Manager of Knoxville Eye Surgery Center, LLC, a Tennessee Limited Liability Company, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself or herself to be a member of Knoxville Eye Surgery Center, LLC, a Tennessee Limited Liability Company of Knoxville Eye Surgery Center, LLC, a Tennessee Limited Liability Company, the within-named bargainer, a Limited Liability Company, and that he or she as such member executed the foregoing instrument for the purposes therein contained, by signing the name of the Limited Liability Company by himself or herself as such member.

WITNESS my hand and seal at office, on the 22nd day of January, 2004

My Commission Expires: 9-5-05

Notary Public



EXHIBIT A

SITUATED in District No. Six (6) of Knox County, Tennessee, and being Lot 5.00 of the One Lot Subdivision of Capital Court, Unit 2, as shown by map of record in Map Cabinet P, Slide 211B, in the Knox County Register's Office, said lot being more particularly bounded and described as follows:

BEGINNING at an existing iron rod in the easterly line of Capital Drive, said iron rod marking the common corner between the property herein described and Lot 4 of Capital Court, Unit 1; thence from said point of BEGINNING with the line of Lot 4, North 65 deg. 01 min. 07 sec. East, 227.49 feet to an existing iron rod corner to Franklin Hill Subdivision; thence with Franklin Hill Subdivision, South 23 deg. 07 min. 00 sec. East, 586.17 feet to an existing iron rod; thence South 06 deg. 26 min. 12 sec. East, 80.33 feet to an iron rod corner to F. S. Foster (Deed Book 1234, page 512); thence with the line of Foster, North 79 deg. 45 min. 09 sec. West, 115.59 feet to a point; thence South 77 deg. 55 min. 02 sec. West; 181.90 feet to an iron rod corner to Lot 5.01; thence with the line of Lot 5.01, North 23 deg. 07 min. 00 sec. West, 365.74 feet to an iron rod; thence continuing with Lot 5.01, North 60 deg. 08 min. 48 sec. West, 50.00 feet to an iron rod in the Eastern line of Capital Drive; thence with the Eastern line of Capital Drive along the arc of a curve to the left, having a radius of 275.00 feet, a chord bearing and distance of North 10 deg. 30 min. 43 sec. East, 182.16 feet, and an arc distance of 185.66 feet to the point of BEGINNING.

The foregoing description was prepared from the subdivision plat prepared by Gary C. Clark, RLS No. 1329. The surveyor's address is Barge, Waggoner, Sumner & Cannon, 2400 First Tennessee Plaza, Knoxville, TN 37929.

BEING part of the same property conveyed to Knoxville Eye Surgery Center, LLC, a Tennessee limited liability company, by Warranty Deed from Capital Court Venture, dated June 26, 1998, of record in Deed Book 2290, page 1075, in the Knox County Register's Office.



Instr: 200401220071562
PAGE: 8 OF 8

STEVE HALL
REGISTER OF DEEDS
KNOX COUNTY

WHEN RECORDED MAIL TO:

First Tennessee Bank National
Association
Private Client Financial Services-Knoxville
800 S. Gay Street
Knoxville, TN 37929

SEND TAX NOTICES TO:

Knoxville Eye Surgery Center, LLC, a
Tennessee Limited Liability Company
140 Capital Drive, Suite 2

Knoxville, TN 37922

OWNER:

Knoxville Eye Surgery Center, LLC, a
Tennessee Limited Liability Company
140 Capital Drive, Suite 2

Knoxville, TN 37922

FOR RECORDER'S USE ONLY

This ASSIGNMENT OF RENTS prepared by:

Name: Commercial Credit Support Center
Company: First Tennessee Bank NA
Address: 800 S. Gay Street
City, State, ZIP: Knoxville, TN 37929

**ASSIGNMENT OF RENTS**

MAXIMUM PRINCIPAL INDEBTEDNESS FOR TENNESSEE RECORDING TAX PURPOSES IS \$0.00

THIS ASSIGNMENT OF RENTS dated January 22, 2004, is made and executed between Knoxville Eye Surgery Center, LLC, a Tennessee Limited Liability Company, whose address is 140 Capital Drive, Suite 2, Knoxville, TN 37922 (referred to below as "Grantor") and First Tennessee Bank National Association, whose address is 800 S. Gay Street, Knoxville, TN 37929 (referred to below as "Lender").

ASSIGNMENT. For valuable consideration, Grantor hereby assigns, grants a continuing security interest in, and conveys to Lender all of Grantor's right, title, and interest in and to the Rents from the following described Property located in Knox County, State of Tennessee:

See Exhibit "A", which is attached to this Assignment and made a part of this Assignment as if fully set forth herein.

The Property or its address is commonly known as 140 Capital Drive, Knoxville, TN 37922. The Property tax identification number is 131LB-005.

This is a present, unconditional and absolute assignment of the Rents from the Property.

CROSS-COLLATERALIZATION. In addition to the Note, this Assignment secures all obligations, debts and liabilities, plus interest thereon, of Grantor to Lender, or any one or more of them, as well as all claims by Lender against Grantor or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated whether Grantor may be liable, individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable.

REVOLVING LINE OF CREDIT. Specifically, in addition to the amounts specified in the indebtedness definition, and without limitation, this Assignment secures a revolving line of credit under which Lender may make advances to Grantor up to the maximum principal indebtedness of \$500,000.00 so long as Grantor complies with all the terms of the Note.

THIS ASSIGNMENT IS GIVEN TO SECURE (1) PAYMENT OF THE INDEBTEDNESS AND (2) PERFORMANCE OF ANY AND ALL OBLIGATIONS OF GRANTOR UNDER THE NOTE, THIS ASSIGNMENT, AND THE RELATED DOCUMENTS. THIS ASSIGNMENT IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Assignment or any related Documents, Grantor shall pay to Lender all amounts secured by this Assignment as they become due, and shall strictly perform all of Grantor's obligations



Instr: 200401220071581 Page: 1 OF 7
REC'D FOR REC 01/22/2004 2:33:42PM
RECORD FEE: \$37.00
R. TAX: \$0.00 T. TAX: \$0.00

ASSIGNMENT OF RENTS (Continued)

Loan No: 30017172

Page 3

the time made or furnished or becomes false or misleading at any time thereafter.

Defective Collateralization. This Assignment or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Death or Insolvency. The dissolution of Grantor's regardless of whether election to continue is made), any member withdraws from the limited liability company, or any other termination of Grantor's existence as a going business or the death of any member, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

Creditor or Foreclosure Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against the Rents or any property securing the Indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Execution; Attachment. Any execution or attachment is levied against the Property, and such execution or attachment is not set aside, discharged or stayed within thirty (30) days after the same is levied.

Change in Zoning or Public Restriction. Any change in any zoning ordinance or regulation or any other public restriction is enacted, adopted or implemented, that limits or defines the uses which may be made of the Property such that the present or intended use of the Property, as specified in the Related Documents, would be in violation of such zoning ordinance or regulation or public restriction, as changed.

Default Under Other Lien Documents. A default occurs under any other mortgage, deed of trust or security agreement covering all or any portion of the Property.

Judgment. Unless adequately covered by insurance in the opinion of Lender, the entry of a final judgment for the payment of money involving more than ten thousand dollars (\$10,000.00) against Grantor and the failure by Grantor to discharge the same, or cause it to be discharged, or bonded off to Lender's satisfaction, within thirty (30) days from the date of the order, decree or process under which or pursuant to which such judgment was entered.

Property Damage or Loss. The Property is lost, stolen, substantially damaged, sold, or borrowed against.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor, or any other guarantor, endorser, surety, or accommodation party of any of the Indebtedness or any Guarantor, or any other guarantor, endorser, surety, or accommodation party dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness. In the event of a death, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

Adverse Change. A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

Cure Provisions. If any default, other than a default in payment is curable and if Grantor has not been given a notice of a breach of the same provision of this Assignment within the preceding twelve (12) months, it may be cured (and no event of default will have occurred) if Grantor, after receiving written notice from Lender demanding cure of such default: (1) cures the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

RIGHTS AND REMEDIES ON DEFAULT. Upon the occurrence of any Event of Default and at any time thereafter, Lender may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

Accelerate Indebtedness. Lender shall have the right at its option without notice to Grantor, the same being expressly waived, to declare the entire Indebtedness immediately due and payable, including (if permitted by applicable law) any prepayment penalty which Grantor would be required to pay.

Collect Rents. Lender shall have the right, without notice to Grantor, to take possession of the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender shall have all the rights provided for in the Lender's Right to Receive and Collect Rents Section, above. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

Appoint Receiver. Lender shall have the right to make application to a court of competent jurisdiction to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property prior to foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

Other Remedies. Lender shall have all other rights and remedies provided in this Assignment or the Note or by law.

Election of Remedies. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Assignment, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Assignment, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports

ASSIGNMENT OF RENTS (Continued)

Loan No: 30017172

Page 5

Assignment. The word "Assignment" means this ASSIGNMENT OF RENTS, as this ASSIGNMENT OF RENTS may be amended or modified from time to time, together with all exhibits and schedules attached to this ASSIGNMENT OF RENTS from time to time.

Borrower. The word "Borrower" means Knoxville Eye Surgery Center, LLC, a Tennessee Limited Liability Company.

Default. The word "Default" means the Default set forth in this Assignment in the section titled "Default".

Event of Default. The words "Event of Default" mean individually, collectively, and interchangeably any of the events of default set forth in this Assignment in the default section of this Assignment.

Grantor. The word "Grantor" means Knoxville Eye Surgery Center, LLC, a Tennessee Limited Liability Company.

Guarantor. The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the indebtedness, and, in each case, Grantor's successors, assigns, heirs, personal representatives, executors and administrators of any guarantor, surety, or accommodation party.

Guaranty. The word "Guaranty" means the guaranty from Guarantor, or any other guarantor, endorser, surety, or accommodation party to Lender, including without limitation a guaranty of all or part of the Note.

Indebtedness. The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Lender to enforce Grantor's obligations under this Assignment, together with interest on such amounts as provided in this Assignment. Specifically, without limitation, Indebtedness includes all amounts that may be indirectly secured by the Cross-Collateralization provision of this Assignment.

Lender. The word "Lender" means First Tennessee Bank National Association, its successors and assigns.

Note. The word "Note" means the promissory note dated January 22, 2004, in the original principal amount of \$500,000.00 from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement.

Property. The word "Property" means all of Grantor's right, title and interest in and to all the Property as described in the "Assignment" section of this Assignment.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guarantees, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

Rents. The word "Rents" means all of Grantor's present and future rights, title and interest in, to and under any and all present and future leases, including, without limitation, all rents, revenue, income, issues, royalties, bonuses, accounts receivable, cash or security deposits, advance rentals, profits and proceeds from the Property, and other payments and benefits derived or to be derived from such leases of every kind and nature, whether due now or later, including without limitation Grantor's right to enforce such leases and to receive and collect payment and proceeds thereunder.

THE UNDERSIGNED ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS ASSIGNMENT, AND NOT PERSONALLY BUT AS AN AUTHORIZED SIGNER, HAS CAUSED THIS ASSIGNMENT TO BE SIGNED AND EXECUTED ON BEHALF OF GRANTOR ON JANUARY 22, 2004.

GRANTOR:

KNOXVILLE EYE SURGERY CENTER, LLC, A TENNESSEE LIMITED LIABILITY COMPANY

By: [Signature]
Lawrence G. Rauen, Chief Manager of Knoxville Eye Surgery Center, LLC, a
Tennessee Limited Liability Company

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF TNCOUNTY OF KNOX

Before me, DAVID W. RECTOR, a Notary Public in and for State and County, personally appeared Lawrence G. Rauen, Chief Manager of Knoxville Eye Surgery Center, LLC, a Tennessee Limited Liability Company, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself or herself to be a member of Knoxville Eye Surgery Center, LLC, a Tennessee Limited Liability Company of Knoxville Eye Surgery Center, LLC, a Tennessee Limited Liability Company, the within-named borrower, a Limited Liability Company, and that he or she as such member executed the foregoing instrument for the purposes therein contained and signing the name of the Limited Liability Company by himself or herself as such member.

WITNESS my hand and seal at office, on the 22nd day of January

My Commission Expires: 9-4-05

Notary Public



EXHIBIT A

SITUATED in District No. Six (6) of Knox County, Tennessee, and being Lot 5.00 of the One Lot Subdivision of Capital Court, Unit 2, as shown by map of record in Map Cabinet P, Slide 211B, in the Knox County Register's Office, said lot being more particularly bounded and described as follows:

BEGINNING at an existing iron rod in the easterly line of Capital Drive, said iron rod marking the common corner between the property herein described and Lot 4 of Capital Court, Unit 1; thence from said point of BEGINNING with the line of Lot 4, North 65 deg. 01 min. 07 sec. East, 227.49 feet to an existing iron rod corner to Franklin Hill Subdivision; thence with Franklin Hill Subdivision, South 23 deg. 07 min. 00 sec. East, 586.17 feet to an existing iron rod; thence South 06 deg. 26 min. 12 sec. East, 80.33 feet to an iron rod corner to F. S. Foster (Deed Book 1234, page 512); thence with the line of Foster, North 79 deg. 45 min. 09 sec. West, 115.59 feet to a point; thence South 77 deg. 55 min. 02 sec. West; 181.90 feet to an iron rod corner to Lot 5.01; thence with the line of Lot 5.01, North 23 deg. 07 min. 00 sec. West, 365.74 feet to an iron rod; thence continuing with Lot 5.01, North 60 deg. 08 min. 48 sec. West, 50.00 feet to an iron rod in the Eastern line of Capital Drive; thence with the Eastern line of Capital Drive along the arc of a curve to the left, having a radius of 275.00 feet, a chord bearing and distance of North 10 deg. 30 min. 43 sec. East, 182.16 feet, and an arc distance of 185.66 feet to the point of BEGINNING.

The foregoing description was prepared from the subdivision plat prepared by Gary C. Clark, RLS No. 1329. The surveyor's address is Barge, Waggoner, Sumner & Cannon, 2400 First Tennessee Plaza, Knoxville, TN 37929.

BEING part of the same property conveyed to Knoxville Eye Surgery Center, LLC, a Tennessee limited liability company, by Warranty Deed from Capital Court Venture, dated June 26, 1998, of record in Deed Book 2290, page 1075, in the Knox County Register's Office.



Instr: 200401220071551
PAGE: 7 OF 7

Commercial Credit Document Checklist

ACCOUNT LEVEL		
Submitted by:	Megan Belcher	Date: 11/9/2011
Phone #:	(865)971-2116	Email: mbelcher@ftb.com
Borrower: Knoxville Eye Surgery		
Account #: 30017240		
Loan Type:	New []	Existing [x]
		Renewal []

If a document is not listed specifically, refer to the Document Placement Guide for the appropriate document location.

<input checked="" type="checkbox"/> Appraisal: RIMS #: <input checked="" type="checkbox"/> Appraisal Review <input checked="" type="checkbox"/> Environmental Site Assessment RIMS #: Environmental Review Evaluation Other (Enter Below)	<input type="checkbox"/> Builder's License <input type="checkbox"/> Contract of: <input type="checkbox"/> Copy of Plans and Specifications <input type="checkbox"/> Engineering Report <input type="checkbox"/> Feasibility or Market Study <input type="checkbox"/> Property Inspection Report <input type="checkbox"/> Survey <input type="checkbox"/> Other (Enter Below)	<input type="checkbox"/> Affidavit of No Liens <input type="checkbox"/> Aircraft Security Agreement <input type="checkbox"/> Agreement (Other) <input type="checkbox"/> Assignment of: <input type="checkbox"/> Contract of: <input type="checkbox"/> Evidence of: <input type="checkbox"/> FAA Conveyance <input type="checkbox"/> Modification of Mtg-RECORDED <input type="checkbox"/> Modification of Mtg-Unrecorded <input checked="" type="checkbox"/> Mortgage/DOT - RECORDED <input type="checkbox"/> Mortgage/DOT - Unrecorded <input type="checkbox"/> Pledge of Deposits <input type="checkbox"/> Preferred Ship Mtg-RECORDED <input type="checkbox"/> Preferred Ship Mtg-Unrecorded <input type="checkbox"/> Safekeeping Receipt <input checked="" type="checkbox"/> Security Agreement <input type="checkbox"/> Stock Certificates (Enter Below)
<input type="checkbox"/> Community Reinvestment Act <input type="checkbox"/> CAD (Credit Approval Document) <input type="checkbox"/> Credit Risk Grade <input type="checkbox"/> Other (Enter Below)	<input type="checkbox"/> Guarantor Agreement <input type="checkbox"/> Other (Enter Below)	<input type="checkbox"/> Stock Powers <input type="checkbox"/> Title Search / Opinion <input checked="" type="checkbox"/> UCC filing-Recorded: <input type="checkbox"/> UCC filing - Unrecorded <input type="checkbox"/> Vehicle Title <input checked="" type="checkbox"/> Other (Enter Below) <u>Delphi Info</u> <u>Owner's Affidavit</u>
<input type="checkbox"/> Boarding Data & Set Up Sheet <input type="checkbox"/> CIP <input type="checkbox"/> KYC <input type="checkbox"/> Maintenance Requests <input type="checkbox"/> Screen Prints <input checked="" type="checkbox"/> Other (Enter Below) <u>Sec. of State</u> <u>Articles of Organization</u>	<input checked="" type="checkbox"/> Agreement to Provide Insurance <input type="checkbox"/> Builder's Risk <input type="checkbox"/> Business Interruption <input type="checkbox"/> Environmental Insurance <input type="checkbox"/> General Liability Insurance <input type="checkbox"/> Life Insurance <input type="checkbox"/> Property and Casualty <input checked="" type="checkbox"/> Title Policy ALTA <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other (Enter Below)	<input type="checkbox"/> ISDA Swap <input type="checkbox"/> Letter of Credit / LOC Application <input type="checkbox"/> Modification/Change Terms Agmt <input checked="" type="checkbox"/> Note / Addendum / Allonge <input type="checkbox"/> Participation Agreement <input checked="" type="checkbox"/> Other (Enter Below) <u>Subordination</u>
<input type="checkbox"/> Agent Bank Correspondence <input type="checkbox"/> Legal Counsel Correspondence (Non Bank Counsel) <input checked="" type="checkbox"/> Other (Enter Below) <u>Index</u>	<input type="checkbox"/> Legal Counsel Correspondence (Initiated by Bank/In Bank Counsel) <input type="checkbox"/> Officer Memos <input type="checkbox"/> Other (Enter Below)	
<input type="checkbox"/> Borrowing Base Calcula/Certi <input type="checkbox"/> Compliance Certificate <input type="checkbox"/> RE Property Analysis <input type="checkbox"/> Effective Date (Enter Below)	<input type="checkbox"/> Attorney's Opinion Letter <input type="checkbox"/> Closing Binder <input type="checkbox"/> Commitment Letter <input checked="" type="checkbox"/> Disbursement Request Authorization <input type="checkbox"/> Good Faith Estimate <input type="checkbox"/> Leases <input checked="" type="checkbox"/> Loan Agreement <input type="checkbox"/> Paid RE Tax Receipts <input type="checkbox"/> Power of Attorney <input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Right of Rescission <input type="checkbox"/> Settlement Statement <input type="checkbox"/> Other (Enter Below)	
<input checked="" type="checkbox"/> Rent Rolls <input type="checkbox"/> Effective Date (Enter Below) <input type="checkbox"/> Other (Enter Below)		
<input type="checkbox"/> Flood Disclosure Notice Letter <input type="checkbox"/> Flood Hazard Notice <input type="checkbox"/> Flood Insurance Policy <input type="checkbox"/> Flood Sufficient Coverage Form <input checked="" type="checkbox"/> Flood Zone Determination <input type="checkbox"/> Other (Enter Below)		

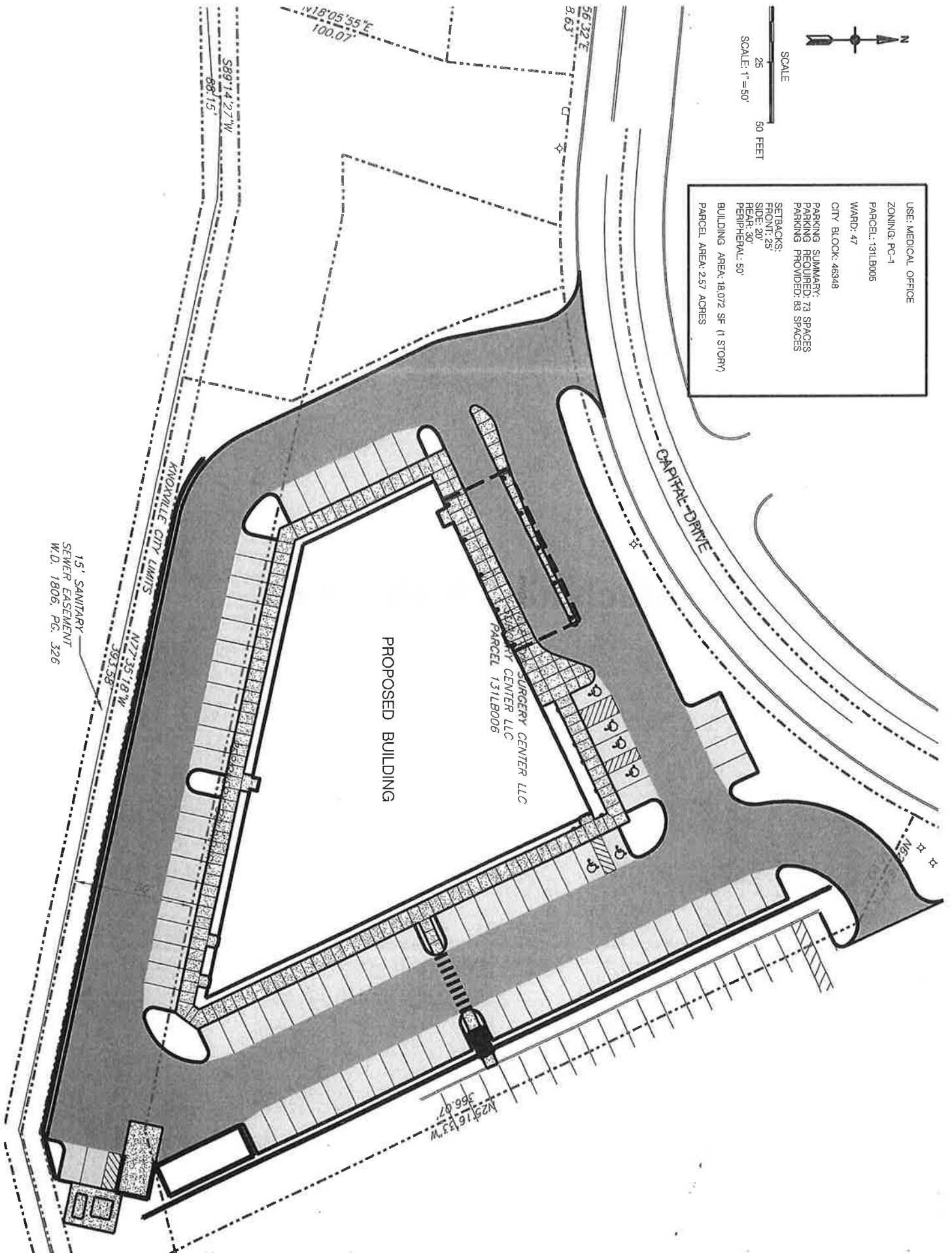
COMMENTS:

Attachment A.6B-1 a-d



SCALE
25 50 FEET
SCALE: 1" = 50'

USE: MEDICAL OFFICE
ZONING: PC-1
PARCEL: 131LB005
WARD: 47
CITY BLOCK: 46348
PARKING SUMMARY: 73 SPACES
PARKING PROVIDED: 83 SPACES
SETBACKS:
FRONT: 25'
SIDE: 20'
REAR: 30'
PERIPHERAL: 50'
BUILDING AREA: 18,072 SF (1 STORY)
PARCEL AREA: 2.57 ACRES



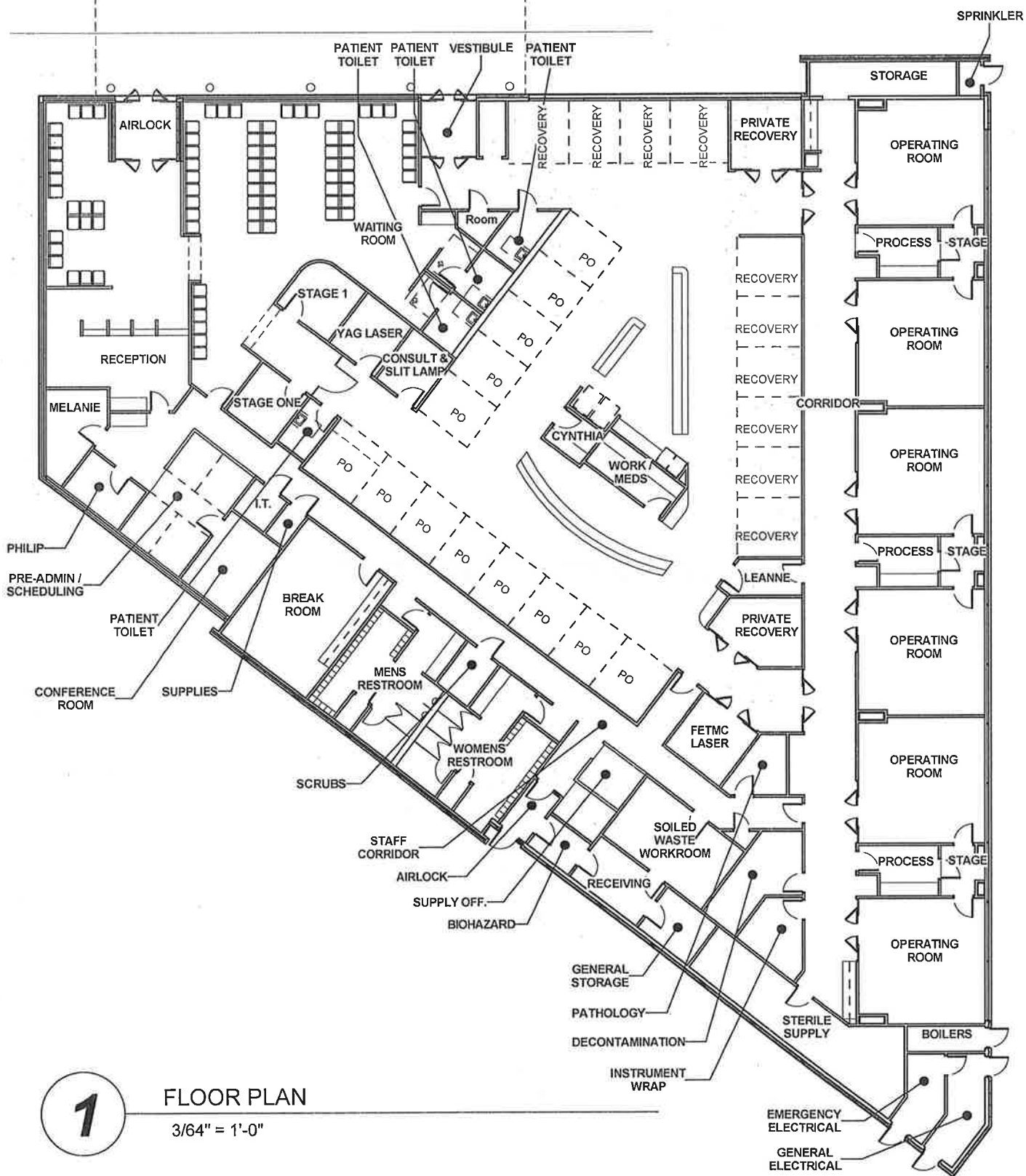
Project Number	14040
Date	01/27/17
Sheet	01/27/17
Scale	
Author	
Checker	
Engineer	
Project Manager	
Client	
Address	
City	
State	
Zip	
Phone	
Fax	
Email	
Website	
Notes	

A NEW FACILITY FOR
KNOXVILLE EYE SURGERY CENTER, LLC



DIA
Design Innovation
ARCHITECTS • INTERIORS • PLANNING

Attachment A.6B-2



1

FLOOR PLAN

3/64" = 1'-0"

PROJECT #:	16118
DATE:	02/08/17
SHEET #:	A 112
REFERENCE:	

KNOXVILLE EYE SURGERY CENTER KNOXVILLE, TN

DIA
Design Innovation
ARCHITECTS + INTERIORS + PLANNING

402 S. Gay Street, Suite 201, Knoxville, TN 37902
ph 865.637.8540 or 865.291.2221 fx 865.544.3840
www.dia-arch.com

Attachment B.Need.A.3

Historical Utilization Data for KESC Primary Service Area by Provider

		Proc Rooms		2013 Total Cases	2014 Total Cases	Proc Room Cases		Total Cases	Cases/OR	OR Utilization - % of Std	Cases/Proc Room	Proc Room Utilization - % of Std
Facility Name		ORs				OR Cases						
Knoxville Eye Surgery Center, LLC	Knox	4	1	10,190	9,626	9,170	890	10,060	2,293	259.3%	890	47.7%
		4	1	10,190	9,626	9,170	890	10,060	2,293	259.3%	890	47.7%
The Eye Surgery Center of Oak Ridge, LLC	Anderson	2	1	3,251	3,302	2,495	1,023	3,518	1,248	141.1%	1,023	54.8%
		2	1	3,251	3,302	2,495	1,023	3,518	1,248	141.1%	1,023	54.8%
Eye Surgery Center of East Tennessee, LLC	Knox	2	1	3,710	4,572	2,930	862	3,792	1,465	165.7%	862	46.2%
		2	1	3,710	4,572	2,930	862	3,792	1,465	165.7%	862	46.2%
Physicians Surgery Center of Knoxville, LLC	Knox	5	0	4,670	5,102	4,472	-	4,472	894	101.2%	N/A	N/A
		5	0	581	912	497	-	497	99	11.2%	N/A	N/A
Southeast Eye Surgery Center	Knox	1	1	-	687	1,843	191	2,034	1,843	208.5%	191	10.2%
		1	1	-	687	1,843	191	2,034	1,843	208.5%	191	10.2%
Total Service Area - ASC's performing Ophthalmology		14	4	21,821	23,289	20,910	2,966	23,876	1,705	192.9%	742	39.7%
		14	4	17,732	19,099	16,935	2,966	19,901	1,422	160.8%	742	39.7%
Optimum Utilization per Guidelines for Growth						884	1,867					

Attachment B.Need.A.8

KESC 2016 Patient Origin with Case Volumes by County

County	#	%	Cum %
Knox	3,029	43.1%	43.1% PSA
Blount	919	13.1%	56.2%
Sevier	547	7.8%	64.0%
Loudon	468	6.7%	70.7%
Campbell	240	3.4%	74.1%
Anderson	238	3.4%	77.5%
Jefferson	211	3.0%	80.5%
Claiborne	200	2.8%	83.3%
Hamblen	186	2.6%	86.0%
Monroe	144	2.1%	88.0% SSA
Roane	134	1.9%	89.9%
Cocke	88	1.3%	91.2%
Grainger	84	1.2%	92.4%
Union	61	0.9%	93.2%
Cumberland	59	0.8%	94.1%
Greene	56	0.8%	94.9%
Morgan	50	0.7%	95.6%
Scott	47	0.7%	96.3%
McMinn	43	0.6%	96.9%
Hawkins	41	0.6%	97.5%
Sullivan	37	0.5%	98.0%
Fentress	26	0.4%	98.3%
Washington	22	0.3%	98.7%
Rhea	18	0.3%	98.9%
Hancock	15	0.2%	99.1%
Meigs	10	0.1%	99.3%
Hamilton	7	0.1%	99.4%
Putnam	5	0.1%	99.4%
White	5	0.1%	99.5%
Bradley	4	0.1%	99.6%
Unicoi	4	0.1%	99.6%
Carter	3	0.0%	99.7%
Davidson	3	0.0%	99.7%
VanBuren	3	0.0%	99.8%
Bledsoe	2	0.0%	99.8%
Obion	2	0.0%	99.8%
Overton	2	0.0%	99.8%
Williamson	2	0.0%	99.9%
Jackson	1	0.0%	99.9%
Johnson	1	0.0%	99.9%
Pickett	1	0.0%	99.9%
Polk	1	0.0%	99.9%
Rutherford	1	0.0%	99.9%
Sequatchie	1	0.0%	100.0%

Shelby	1	0.0%	100.0%
Smith	1	0.0%	100.0%
Warren	<u>1</u>	0.0%	100.0%
	7,024		

AL	2
GA	11
KY	40
NC	6
VA	63
Other States/Countries	<u>33</u>
Total - Outside TN	155

Attachment B.Need.A.11.a

HRSA Data Warehouse

State: Tennessee

County: Anderson County, Blount County, Campbell County, Claiborne County, Hamblen County, Jefferson County, Knox County, Loudon County, Sevier County

MUA ID: All

County Name	County FIPS Code	Service Area Name	MUA/P Source Identification Number	Designation	Type	Population	Type	Index of Medical Underservice Score	MUA/P Designation Date	MUA/P Update Date
Anderson County	001	Anderson Service Area	03241	Medically Underserved Area	Medically Underserved Area			60.50	07/24/1984	05/04/1994
CT 0207.00										
CT 0208.00										
CT 0210.00										
CT 0212.01										
CT 0212.02										
Blount County	009	Blount Service Area	03262	Medically Underserved Area	Medically Underserved Area			58.84	05/12/1994	05/12/1994
CT 0101.00										
CT 0105.00										
CT 0112.00										
CT 0113.01										
CT 0113.02										
CT 0116.02										
Blount County	009	Blount Service Area	03269	Medically Underserved Area	Medically Underserved Area			54.90	05/12/1994	05/12/1994
CT 0108.00										
Blount County	009	Blount Service Area	03270	Medically Underserved Area	Medically Underserved Area			54.90	07/12/1994	07/12/1994
CT 0114.01										
CT 0114.02										
CT 9802.00										
Campbell County	013	CAMPBELL SERVICE AREA	03176	Medically Underserved Area	Medically Underserved Area			41.40	11/01/1978	11/01/1978
Claiborne County	025	CLAIBORNE SERVICE AREA	03182	Medically Underserved Area	Medically Underserved Area			46.20	11/01/1978	11/01/1978
Hamblen County	063	Whitesburg Service Area	07497	Medically Underserved Area	Medically Underserved Area			61.30	05/12/1994	05/12/1994

HRSA Data Warehouse

County Name	County FIPS Code	Service Area Name	MUA/P Source Identification Number	Designation Type	Population Type	Index of Medical Underservice Score	MUA/P Designation Date	MUA/P Update Date
MCD (91584) District 9								
Jefferson County	089	Chestnut Hill Division Service Area	03245	Medically Underserved Area	Medically Underserved Area	59.90	07/24/1984	05/04/1994
MCD (91040) District 6								
MCD (91420) District 8								
MCD (90280) District 2								
MCD (90470) District 3								
MCD (90090) District 1								
Knox County	093	Knox Service Area	03246	Medically Underserved Area	Medically Underserved Area	53.60	05/11/1982	05/04/1994
CT 0016.00								
CT 0017.00								
CT 0018.00								
CT 0019.00								
CT 0020.00								
CT 0021.00								
CT 0067.00								
Knox County	093	Knox Service Area	03247	Medically Underserved Area	Medically Underserved Area	53.60	05/18/1982	05/04/1994
CT 0030.00								
CT 0031.00								
CT 0032.00								
CT 0033.00								
Knox County	093	Knox Service Area	03263	Medically Underserved Area	Medically Underserved Area	57.63	05/12/1994	05/12/1994
CT 0001.00								
CT 0009.01								
CT 0009.02								
CT 0014.00								
CT 0028.00								
CT 0066.00								
CT 0067.00								

HRSA Data Warehouse

County Name	County FIPS Code	Service Area Name	MUA/P Source Identification Number	Designation Type	Population Type	Index of Medical Underservice Score	MUA/P Designation Date	MUA/P Update Date
CT 0068.00								
CT 0069.00								
CT 0070.00								
Loudon County	105	LOUDON SERVICE AREA	03210	Medically Underserved Area	Medically Underserved Area	58.10	11/01/1978	11/01/1978
Sevier County	155	Dunn Creek Division	03260	Medically Underserved Area	Medically Underserved Area	45.60	05/12/1994	05/12/1994
MCD (90726) District 4								
MCD (90536) District 3								
MCD (90156) District 1								
MCD (91866) District 10								
MCD (90916) District 5								
MCD (91296) District 7								

Powered by HRSA Data Warehouse

Printed on: 1/23/2017

Attachment B.Need.C(1)

KESC 2016 Patient Origin with Case Volumes by County

County	#	%	Cum %
Knox	3,029	43.1%	43.1% PSA
Blount	919	13.1%	56.2%
Sevier	547	7.8%	64.0%
Loudon	468	6.7%	70.7%
Campbell	240	3.4%	74.1%
Anderson	238	3.4%	77.5%
Jefferson	211	3.0%	80.5%
Claiborne	200	2.8%	83.3%
Hamblen	186	2.6%	86.0%
Monroe	144	2.1%	88.0% SSA
Roane	134	1.9%	89.9%
Cocke	88	1.3%	91.2%
Grainger	84	1.2%	92.4%
Union	61	0.9%	93.2%
Cumberland	59	0.8%	94.1%
Greene	56	0.8%	94.9%
Morgan	50	0.7%	95.6%
Scott	47	0.7%	96.3%
McMinn	43	0.6%	96.9%
Hawkins	41	0.6%	97.5%
Sullivan	37	0.5%	98.0%
Fentress	26	0.4%	98.3%
Washington	22	0.3%	98.7%
Rhea	18	0.3%	98.9%
Hancock	15	0.2%	99.1%
Meigs	10	0.1%	99.3%
Hamilton	7	0.1%	99.4%
Putnam	5	0.1%	99.4%
White	5	0.1%	99.5%
Bradley	4	0.1%	99.6%
Unicoi	4	0.1%	99.6%
Carter	3	0.0%	99.7%
Davidson	3	0.0%	99.7%
VanBuren	3	0.0%	99.8%
Bledsoe	2	0.0%	99.8%
Obion	2	0.0%	99.8%
Overton	2	0.0%	99.8%
Williamson	2	0.0%	99.9%
Jackson	1	0.0%	99.9%
Johnson	1	0.0%	99.9%
Pickett	1	0.0%	99.9%
Polk	1	0.0%	99.9%
Rutherford	1	0.0%	99.9%
Sequatchie	1	0.0%	100.0%

Shelby	1	0.0%	100.0%
Smith	1	0.0%	100.0%
Warren	<u>1</u>	0.0%	100.0%
	7,024		

AL	2
GA	11
KY	40
NC	6
VA	63
Other States/Countries	<u>33</u>
Total - Outside TN	155

Attachment B.Need.C(2)

KESC Primary Service Area Population and Demographic Data

County	Department of Health/Health Statistics							Bureau of the Census				Tenn Care	
	Total Population - Current Year	Total Population - Projected Year	Total Population - % Change	Target Population (65+) - Current Year	Target Population (65+) - Projected Year	Target Population - % Change	Target Population Projected Year as a % of Total	Median Age	Median Household Income	Person Below Poverty Level	Person Below Poverty Level as a % of Total	TennCare Enrollees	TennCare Enrollees as % of Population
Knox	466,345	488,993	4.9%	70,360	80,979	15.1%	16.6%	37.2	48,701	74,615	16.0%	82,609	17.7%
Blount	133,236	139,725	4.9%	26,259	30,754	17.1%	22.0%	41.4	48,286	18,786	14.1%	24,102	18.1%
Sevier	101,144	108,468	7.2%	19,374	23,251	20.0%	21.4%	40.9	42,258	15,475	15.3%	22,287	22.0%
Loudon	54,261	57,923	6.7%	15,089	17,908	18.7%	30.9%	46.0	51,107	7,814	14.4%	9,852	18.2%
Campbell	41,464	41,787	0.8%	8,645	9,698	12.2%	23.2%	41.7	32,028	9,620	23.2%	13,891	33.5%
Anderson	77,667	79,061	1.8%	15,608	17,490	12.1%	22.1%	42.6	42,880	13,902	17.9%	17,423	22.4%
Jefferson	55,714	58,372	4.8%	11,400	13,331	16.9%	22.8%	40.8	42,417	9,193	16.5%	13,413	24.1%
Claiborne	33,800	34,713	2.7%	6,774	7,876	16.3%	22.7%	41.1	34,899	7,402	21.9%	9,489	28.1%
Hamblen	65,332	67,028	2.6%	12,215	13,432	10.0%	20.0%	39.6	37,617	13,916	21.3%	17,238	26.4%
Service Area Total	1,028,963	1,076,070	4.6%	185,724	214,719	15.6%	20.0%	41.3	42,244	170,723	16.6%	210,304	20.4%
State of TN Total	6,812,005	7,108,031	4.3%	1,091,516	1,266,295	16.0%	17.8%	38.0	45,219	1,198,913	17.6%	1,565,932	23.0%

Svc area growth rate / year

1.1%

3.9%

Attachment B.Need.D.1.b

KESC Primary Service Area Population and Demographic Data

County	Department of Health/Health Statistics							Bureau of the Census				Tenn Care	
	Total Population - Current Year	Total Population - Projected Year	Total Population - % Change	Target Population (65+) - Current Year	Target Population (65+) - Projected Year	Target Population - % Change	Target Population Projected Year as a % of Total	Median Age	Median Household Income	Person Below Poverty Level	Person Below Poverty Level as a % of Total	TennCare Enrollees	TennCare Enrollees as % of Population
Knox	466,345	488,993	4.9%	70,360	80,979	15.1%	16.6%	37.2	48,701	74,615	16.0%	82,609	17.7%
Blount	133,236	139,725	4.9%	26,259	30,754	17.1%	22.0%	41.4	48,286	18,786	14.1%	24,102	18.1%
Sevier	101,144	108,468	7.2%	19,374	23,251	20.0%	21.4%	40.9	42,258	15,475	15.3%	22,287	22.0%
Loudon	54,261	57,923	6.7%	15,089	17,908	18.7%	30.9%	46.0	51,107	7,814	14.4%	9,852	18.2%
Campbell	41,464	41,787	0.8%	8,645	9,698	12.2%	23.2%	41.7	32,028	9,620	23.2%	13,891	33.5%
Anderson	77,667	79,061	1.8%	15,608	17,490	12.1%	22.1%	42.6	42,880	13,902	17.9%	17,423	22.4%
Jefferson	55,714	58,372	4.8%	11,400	13,331	16.9%	22.8%	40.8	42,417	9,193	16.5%	13,413	24.1%
Claiborne	33,800	34,713	2.7%	6,774	7,876	16.3%	22.7%	41.1	34,899	7,402	21.9%	9,489	28.1%
Hamblen	65,332	67,028	2.6%	12,215	13,432	10.0%	20.0%	39.6	37,617	13,916	21.3%	17,238	26.4%
Service Area Total	1,028,963	1,076,070	4.6%	185,724	214,719	15.6%	20.0%	41.3	42,244	170,723	16.6%	210,304	20.4%
State of TN Total	6,812,005	7,108,031	4.3%	1,091,516	1,266,295	16.0%	17.8%	38.0	45,219	1,198,913	17.6%	1,565,932	23.0%

Svc area growth rate / year

1.1%

3.9%

Attachment B.Need.E

Historical Utilization Data for KESC Primary Service Area by Provider

Facility Name	County	Proc		2013 Total Cases	2014 Total Cases	2015						
		ORs	Rooms			OR Cases	Proc Room Cases	Total Cases	Cases/OR	Utilization - % of Std	Cases/Proc Room	Proc Room Utilization - % of Std
Knoxville Eye Surgery Center, LLC Total Cases Ophthalmology Cases	Knox	4	1	10,190	9,626	9,170	890	10,060	2,293	259.3%	890	47.7%
		4	1	10,190	9,626	9,170	890	10,060	2,293	259.3%	890	47.7%
The Eye Surgery Center of Oak Ridge, LLC Total Cases Ophthalmology Cases	Anderson	2	1	3,251	3,302	2,495	1,023	3,518	1,248	141.1%	1,023	54.8%
		2	1	3,251	3,302	2,495	1,023	3,518	1,248	141.1%	1,023	54.8%
Eye Surgery Center of East Tennessee, LLC Total Cases Ophthalmology Cases	Knox	2	1	3,710	4,572	2,930	862	3,792	1,465	165.7%	862	46.2%
		2	1	3,710	4,572	2,930	862	3,792	1,465	165.7%	862	46.2%
Physicians Surgery Center of Knoxville, LLC Total Cases Ophthalmology Cases	Knox	5	0	4,670	5,102	4,472	-	4,472	894	101.2%	N/A	N/A
		5	0	581	912	497	-	497	99	11.2%	N/A	N/A
Southeast Eye Surgery Center Total Cases Ophthalmology Cases	Knox	1	1	-	687	1843	191	2,034	1,843	208.5%	191	10.2%
		1	1	-	687	1843	191	2,034	1,843	208.5%	191	10.2%
Total Service Area - ASC's performing Ophthalmology Total Cases Ophthalmology Cases		14	4	21,821	23,289	20,910	2,966	23,876	1,705	192.9%	742	39.7%
		14	4	17,732	19,099	16,935	2,966	19,901	1,422	160.8%	742	39.7%

Optimum Utilization per Guidelines for Growth

884 1,867

Attachment B.Economic Feasibility.3

KESC List of Additional Fixed and Moveable Equipment Needed

Moveable Equipment	Qty	Unit Price	Extended Price
Anesthesia Cart	2	\$ 995	\$1,990
Autoclaves	4	\$ 62,991	\$251,963
Patient Monitors	8	\$ 4,959	\$39,672
Gas Modules / Passport	2	\$ 2,149	\$4,298
Surgical Microscope	2	\$ 67,450	\$134,900
Anesthesia Machines	1	\$ 39,995	\$39,995
Phaco Machine	1	\$ 63,800	\$63,800
Prep table 20 X 20 X 34(w/ shelf)	2	\$ 400	\$800
Stool- physician operating	2	\$ 750	\$1,500
Visual monitor for ORs	6	\$ 450	\$2,700
Back Table 24 X 48 X 30 w/ shelf	2	\$ 400	\$800
Stretchers - Regular	4	\$ 6,518	\$26,072
Stretchers - Bariatric	5	\$ 7,199	\$35,995
Total Moveable Equipment Costs			\$604,484

Fixed Equipment	Qty	Unit Price	Extended Price
OR Lights	6	\$ 108,469	\$650,814

Attachment B.Economic Feasibility.5

ANCHOR

HEALTH PROPERTIES

Knoxville Eye Surgery Center
New 6-OR Outpatient Surgery Center
Project Budget

February 1, 2017

To Whom It May Concern,

Below is the project budget outlining the costs to construct a new, 6 operating room outpatient surgery center for Tennessee Valley Eye Center (Knoxville Eye Surgery Center, LLC).

<u>TVEC ASC Project Budget</u>	
Architectural and Engineering Fees	\$ 371,518.11
Legal, Admin and Consulting Fees (excluding CON Fee)	\$ 283,287.25
Site Prep Costs	\$ 677,783.04
Construction Costs	\$ 3,890,825.80
Contingency (5% of Site Prep and Construction Costs)	\$ 224,555.39
TOTAL	\$ 5,447,969.59

Best Regards,



Jonathan L. Nelson
jnelson@anchorhealthproperties.com
(434) 989-7138

February 2, 2017

Ms. Melanie Hill
Executive Director
State of Tennessee
Health Services and Development Agency
500 Deadrick Street, Suite 850
Nashville, TN 37243

Re: Knoxville Eye Surgery Center, LLC– Knoxville, TN:
TENNESSEE VALLEY EYE Center Relocation – Verification of Estimated Construction Costs

Dear Ms. Hill:

I am serving as the Senior Project Architect for Design Innovation Architects, the architects for the subject project. The proposed project is to construct a new 18,500 square foot 1-story ambulatory surgery center located at 140 Capital Drive, Knoxville, TN. The center shall replace the existing ambulatory surgery center currently operating on the second floor of the adjacent 2-story Tennessee Valley Eye Center also located at 140 Capital Drive.

The center shall include all site related improvements for patient and staff parking, covered drop-off/pick-up area, a small and separate out building for medical gases, compressed air, and vacuum systems. The electrical transformer and new emergency generator will also be located near the out building on concrete pads.

The center shall consist of six (6) Class C operating rooms and the associated twelve (12) pre-op bays and twelve (12) recovery bays. All building code required support spaces customary for surgery centers are included as delineated on the attached drawings.

We have reviewed the construction cost estimates developed for the Knoxville Eye Surgery Center relocation project on Capital Drive, Knoxville, TN. The construction cost estimate of \$3,890,826.00 includes the building and interior build-out of the entire project.

It is our professional opinion that the construction cost proposed is consistent with historical data based on similar type projects. It is important to note that our opinion is based on normal market conditions, price escalation, etc.

The project will be developed under the current codes and standards enforced by the State of Tennessee and the City of Knoxville as follows:

State of Tennessee

2012 International Building Code
2012 International Fire Code
2012 International Fuel Gas Code
2012 International Plumbing Code
2012 International Mechanical Code
2012 International Gas Code
2012 NFPA 1, Excluding NFPA 5000
2011 National Electric Code
2012 International Energy Conservation Code
2010 AIA Guidelines for Design & Construction of Health Care Facilities
2010 Americans with Disabilities Act
2007 ASHRAE Handbook of Fundamentals
2012 NFPA 101 Life Safety Code
2009 ICC/ANSI A117.1

City of Knoxville

2012 International Building Code
2012 International Fire Code with local amendments
2012 International Fuel Gas Code
2012 International Plumbing Code
2012 International Mechanical Code
2012 International Gas Code
2012 NFPA 1, Excluding NFPA 5000
2011 National Electric Code
2012 International Energy Conservation Code
2010 AIA Guidelines for Design & Construction of Health Care Facilities
2010 Americans with Disabilities Act
2007 ASHRAE Handbook of Fundamentals
2012 NFPA 101 Life Safety Code
2009 ICC/ANSI A117.1
2011 National Electric Code
2012 Green Construction Code (pending adoption)
2012 International Performance Code
Knoxville Code of Ordinances: Chapter 6 Buildings and Building Regulations, Article 1. Section 6-5. Fire District
City of Knoxville Zoning Ordinance (with Amendments)

If you have any questions regarding the project, please feel free to contact me anytime.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Norris". The signature is fluid and cursive, with a horizontal line extending from the end.

Richard A. Norris, AIA
Senior Project Architect

Attachment B.Economic Feasibility.B



February 6, 2017

Erik Garkovich
First Tennessee Bank, National Association
800 S. Gay St – 5th Floor
Knoxville, TN 37929

Melanie Burgess
Knoxville Eye Surgery Center LLC
140 Capital Drive – Ste 220
Knoxville, TN 37922

Re: Knoxville Eye Surgery Center LLC – Ambulatory Surgery Center Construction Loan

Dear Melanie:

Thank you for the relationship you have had with First Tennessee Bank since 1999 and allowing us to partner with Knoxville Eye Surgery Center LLC on all of your financing needs. Thank you also for allowing First Tennessee Bank the opportunity to work with you on the renovation of your existing building and to provide financing on the new adjacent ambulatory surgery center.

You have provided the bank with an updated project budget which includes total project costs of \$7,063,651 associated with the project. It is our intention to finance 100% of these costs. The bank is offering an interest only construction period of up to 12 months followed by 180 principal and interest payments based on a 25 year amortization.

If you have any questions, please feel free to call me at (865) 971-2240.

Thanks,

A handwritten signature in cursive script that reads 'Erik Garkovich'.

Erik Garkovich
Vice-President

Attachment B.Economic Feasibility.E.3

KESC Highest Volume Procedures with Gross Charge and Medicare Payment Rates

Procedure	Quick Description	Gross Charge	Medicare Rate
66984	Phaco w/ IOL	\$ 2,590	\$ 850
66821	YAG Laser Capsulotomy	\$ 774	\$ 214
66982	Phaco w/ IOL - Complex	\$ 2,590	\$ 840
67042	Vitrectomy; Internal Membrane	\$ 4,135	\$ 1,572
65756	DSAEK/DMEK	\$ 4,110	\$ 1,572
67108	Retinal Detachmt w/ Vitrectomy	\$ 3,370	\$ 1,572
15823	Blephoroplasty - Upper	\$ 2,080	\$ 532
67036	Vitrectomy, Pars Plana Approach	\$ 2,890	\$ 821
66761	Iridotomy/Iridectomy by Laser Surgery	\$ 700	\$ 157
66986	Exchange of IOL	\$ 2,590	\$ 793
67880	Construction of Intermarginal Adhesions	\$ 1,575	\$ 477
67840	Excision of Lesion of Eyelid	\$ 950	\$ 158
67121	Removal of IOL Posterior	\$ 1,950	\$ 816
66183	Mini Express Shunt	\$ 4,500	\$ 1,572
67904	Repair of Blepharoptosis (Tarso)	\$ 1,870	\$ 572
67040	Vitrectomy with Endolaser	\$ 3,370	\$ 1,572
67041	Vitrectomy; Preretinal Membrane	\$ 4,135	\$ 825
67113	Retinal Detachment Complex	\$ 4,135	\$ 1,572
67228	Indirect Laser	\$ 960	\$ 156
65755	Keratoplasty (Corneal Transplant)	\$ 3,355	\$ 1,572
67010	Removal of Vitreous, Anterior Approach	\$ 2,030	\$ 489
67924	Repair of Entropion; Extensive	\$ 1,370	\$ 669
65426	Excision or Transposition of Pterygium	\$ 2,230	\$ 686
66180	Aqueous Shunt	\$ 4,000	\$ 1,572
66710	Ciliary Body Destruction	\$ 1,490	\$ 664

Attachment B.Economic Feasibility.F.1

NOVINGER, BALL & ZIVI, P.C.

JEFFREY H. NOVINGER, CPA
ROGER L. BALL, CPA (Retired)
RICHARD I. ZIVI, JR., CPA
KATHRYN S. BULMER, CPA
LUCINDA J. SEGERS, CPA
KIMBERLY M. PETERS, CPA
TERRY R. HALL, JR., CPA
BRADLEY E. STOOKSBURY, CPA

CERTIFIED PUBLIC ACCOUNTANTS
4110 SUTHERLAND AVENUE
KNOXVILLE, TN 37919

AREA CODE 865
PHONE: 584-1184
FAX: 558-6192
WWW.NBZHOME.COM

To the Members
Knoxville Eye Surgery Center, LLC
d/b/a/ Tennessee Valley Eye Center
Knoxville, Tennessee

Management is responsible for the accompanying financial statements of Knoxville Eye Surgery Center, LLC d/b/a Tennessee Valley Center, which comprise the balance sheet as of December 31, 2016, and the related statement of income and members' equity for the year then ended in accordance with accounting principles generally accepted in the United States of America. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the financial statements nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, we do not express an opinion, a conclusion, nor provide any form of assurance on these financial statements.

Management has elected to omit substantially all of the disclosures and the statement of cash flows required by accounting principles generally accepted in the United States of America. If the omitted disclosures and the statement of cash flows were included in the financial statements, they might influence the user's conclusions about the Company's financial position, results of operations, and cash flows. Accordingly, the financial statements are not designed for those who are not informed about such matters.

Accounting principles generally accepted in the United States of America require that fixed assets be depreciated over their estimated useful lives. The Company has computed depreciation on property and equipment in accordance with the Modified Accelerated Cost Recovery System required for federal income tax purposes, which does not allocate depreciation expense over the estimated useful lives of the assets. The effects of this departure from accounting principles generally accepted in the United States of America have not been determined.

Supplementary Information

The supplementary information contained in Schedules 1-5 is presented for purposes of additional analysis and is not a required part of the basic financial statements. This information is the representation of management. The information was subject to our compilation engagement, however, we have not audited or reviewed the supplementary information and, accordingly, do not express an opinion, a conclusion, nor provide any form of assurance on such supplementary information.

Novinger, Ball & Zivi, P.C.

February 8, 2017

KNOXVILLE EYE SURGERY CENTER, LLC
d/b/a/ TENNESSEE VALLEY EYE CENTER

BALANCE SHEET

December 31, 2016

ASSETS

CURRENT ASSETS

Cash		\$1,134,812
Accounts receivable	\$1,269,452	
Less estimated uncollectible accounts	<u>138,319</u>	1,131,133
Inventory - at cost		310,065
Prepaid expenses		<u>117,307</u>
TOTAL CURRENT ASSETS		<u>\$2,693,317</u>

PROPERTY AND EQUIPMENT - at cost

Land	\$1,426,260	
Building	4,694,045	
Equipment	<u>2,642,375</u>	
	<u>\$8,762,680</u>	
Less accumulated depreciation	<u>4,240,866</u>	4,521,814

OTHER ASSET- goodwill, net of amortization

34,806

\$7,249,937

LIABILITIES AND EQUITY

CURRENT LIABILITIES

Accounts payable	\$ 682,773
Accrued wages and taxes	135,967
Retirement plan contribution payable	134,539
Notes payable	369,142
Current portion of long-term debt	<u>178,885</u>
TOTAL CURRENT LIABILITIES	<u>\$1,501,306</u>

LONG-TERM DEBT- less current portion

332,163

MEMBERS' EQUITY

5,416,468

\$7,249,937

See accountants' compilation report.

KNOXVILLE EYE SURGERY CENTER, LLC
d/b/a TENNESSEE VALLEY EYE CENTER

STATEMENT OF INCOME AND MEMBERS' EQUITY

For the year ended December 31, 2016

Revenue - facility fees net of adjustments		\$ 11,173,947
Less:		
Direct costs	2,348,409	
Transplant tissue	<u>1,039,301</u>	<u>3,387,710</u>
		\$ 7,786,237
Expenses:		
Salaries	\$2,761,832	
Bank charges	32,075	
Business entertainment	45,718	
Computer expense	62,430	
Contract wages	103,922	
Depreciation and amortization	246,236	
Dues and subscriptions	11,671	
Insurance	233,009	
Interest expense	40,775	
Laundry and uniforms	91,058	
Medical reimbursement plan	23,607	
Medical supplies	460,829	
Meetings and seminars	14,435	
Not otherwise classified	13,809	
Office supplies	91,159	
Payroll taxes	204,909	
Professional fees	63,514	
Reimbursed expenses	(109,145)	
Rent	22,700	
Repairs and maintenance	322,590	
Retirement plan contribution	223,664	
Taxes and licenses	79,210	
Telephone	40,691	
Utilities	<u>80,328</u>	<u>5,161,026</u>
	NET OPERATING INCOME	\$ 2,625,211
Other income:		
Net income - rental operations	\$ 23,455	
Net income - optical operations	<u>208,195</u>	<u>231,650</u>
	NET INCOME	\$ 2,856,861
Members' equity at January 1, 2016		4,691,066
Member's capital contribution		422,092
Members' withdrawals (net)		<u>(2,553,551)</u>
	MEMBERS' EQUITY AT DECEMBER 31, 2016	<u>\$ 5,416,468</u>

See accountants' compilation report.

KNOXVILLE EYE SURGERY CENTER, LLC
d/b/a TENNESSEE VALLEY EYE CENTER

SCHEDULE 1 – STATEMENT OF INCOME – RENTAL OPERATIONS

For the year ended December 31, 2016

Rental income		\$ 263,886
Expenses:		
Depreciation	\$45,072	
Insurance	6,027	
Interest expense	1,216	
Management fees	14,252	
Repairs and maintenance	74,331	
Taxes	42,113	
Utilities	57,420	<u>240,431</u>
	NET INCOME	<u>\$ 23,455</u>

See accountants' compilation report.

KNOXVILLE EYE SURGERY CENTER, LLC
d/b/a TENNESSEE VALLEY EYE CENTER

SCHEDULE 2 – STATEMENT OF INCOME – OPTICAL OPERATIONS

For the year ended December 31, 2016

Sales		\$1,261,993	
Cost of sales:			
Inventory at January 1, 2016	\$ 83,335		
Purchases	634,394		
	<u>\$717,729</u>		
Less inventory at December 31, 2016	97,971	619,758	
	GROSS PROFIT	<u>\$ 642,235</u>	
Expenses:			
Salaries	\$277,397		
Bank charges	37,405		
Depreciation	5,633		
Insurance	12,123		
Medical reimbursement plan	3,394		
Not otherwise classified	5,996		
Office supplies	6,966		
Payroll taxes	20,692		
Rent - premises	44,130		
Repairs and maintenance	12,730		
Retirement plan contribution	20,587		
Taxes and licenses	5,523		
Telephone	9,916		
Utilities	7,178		
Allocated overhead	<u>(35,630)</u>	434,040	
	NET INCOME	<u><u>\$ 208,195</u></u>	

See accountants' compilation report.

KNOXVILLE EYE SURGERY CENTER, LLC
d/b/a TENNESSEE VALLEY EYE CENTER

SCHEDULE 3 - COMPARATIVE STATEMENT OF INCOME

For the years ended December 31, 2016 and 2015

	December 31,		Increase
	2016	2015	(Decrease)
Revenue	\$ 11,173,947	\$ 10,790,748	\$ 383,199
Less:			
Direct costs	2,348,409	2,616,262	(267,853)
Transplant tissue	1,039,301	1,131,047	(91,746)
	<u>\$ 7,786,237</u>	<u>\$ 7,043,439</u>	<u>\$ 742,798</u>
Expenses:			
Salaries	\$ 2,761,832	\$ 2,678,578	\$ 83,254
Bank charges	32,075	24,303	7,772
Business entertainment	45,718	25,296	20,422
Computer expense	62,430	47,823	14,607
Contract wages	103,922	150,202	(46,280)
Depreciation and amortization	246,236	228,169	18,067
Dues and subscriptions	11,671	37,614	(25,943)
Insurance	233,009	217,163	15,846
Interest expense	40,775	36,752	4,023
Laundry and uniforms	91,058	85,580	5,478
Medical reimbursement plan	23,607	53,647	(30,040)
Medical supplies	460,829	372,118	88,711
Meetings and seminars	14,435	19,719	(5,284)
Not otherwise classified	13,809	5,943	7,866
Office supplies	91,159	98,840	(7,681)
Payroll taxes	204,909	202,558	2,351
Professional fees	63,514	68,831	(5,317)
Reimbursed expenses	(109,145)	(120,935)	11,790
Rent	22,700	28,741	(6,041)
Repairs and maintenance	322,590	394,586	(71,996)
Retirement plan contribution	223,664	189,002	34,662
Taxes and licenses	79,210	85,110	(5,900)
Telephone	40,691	37,065	3,626
Utilities	80,328	82,142	(1,814)
	<u>\$ 5,161,026</u>	<u>\$ 5,048,847</u>	<u>\$ 112,179</u>
NET OPERATING INCOME	<u>\$ 2,625,211</u>	<u>\$ 1,994,592</u>	<u>\$ 630,619</u>
Other income	<u>231,650</u>	<u>197,959</u>	<u>33,691</u>
NET INCOME	<u>\$ 2,856,861</u>	<u>\$ 2,192,551</u>	<u>\$ 664,310</u>

See accountants' compilation report.

KNOXVILLE EYE SURGERY CENTER, LLC
d/b/a TENNESSEE VALLEY EYE CENTER

SCHEDULE 4 - COMPARATIVE STATEMENT OF INCOME – RENTAL OPERATIONS

For the years ended December 31, 2016 and 2015

	<u>December 31,</u>		<u>Increase</u>
	<u>2016</u>	<u>2015</u>	<u>(Decrease)</u>
Rental income	\$ 263,886	\$ 263,396	\$ 490
Expenses:			
Depreciation	\$ 45,072	\$ 45,758	\$ (686)
Insurance	6,027	6,521	(494)
Interest expense	1,216	3,120	(1,904)
Management fees	14,252	14,203	49
Repairs and maintenance	74,331	90,361	(16,030)
Taxes	42,113	41,996	117
Utilities	57,420	58,491	(1,071)
	<u>\$ 240,431</u>	<u>\$ 260,450</u>	<u>\$(20,019)</u>
NET INCOME	<u>\$ 23,455</u>	<u>\$ 2,946</u>	<u>\$ 20,509</u>

See accountants' compilation report.

KNOXVILLE EYE SURGERY CENTER, LLC
d/b/a TENNESSEE VALLEY EYE CENTER

SCHEDULE 5 - COMPARATIVE STATEMENT OF INCOME – OPTICAL OPERATIONS

For the years ended December 31, 2016 and 2015

	December 31,		Increase
	2016	2015	(Decrease)
Sales	\$ 1,261,993	\$ 1,318,934	\$ (56,941)
Cost of sales	619,758	683,421	(63,663)
GROSS PROFIT	\$ 642,235	\$ 635,513	\$ 6,722
Expenses:			
Salaries	\$ 277,397	\$ 272,005	\$ 5,392
Bank charges	37,405	35,335	2,070
Depreciation	5,633	5,720	(87)
Insurance	12,123	12,847	(724)
Medical reimbursement plan	3,394	5,240	(1,846)
Not otherwise classified	5,996	7,554	(1,558)
Office supplies	6,966	8,474	(1,508)
Payroll taxes	20,692	20,617	75
Rent - premises	44,130	44,280	(150)
Repairs and maintenance	12,730	14,656	(1,926)
Retirement plan contribution	20,587	25,482	(4,895)
Taxes and licenses	5,523	6,557	(1,034)
Telephone	9,916	9,930	(14)
Utilities	7,178	7,311	(133)
Allocated overhead	(35,630)	(35,508)	(122)
	<u>\$ 434,040</u>	<u>\$ 440,500</u>	<u>\$ (6,460)</u>
NET INCOME	<u>\$ 208,195</u>	<u>\$ 195,013</u>	<u>\$ 13,182</u>

See accountants' compilation report.

Attachment B.Orderly Development.D.1

Board for Licensing Health Care Facilities



State of Tennessee

License No. 0000000093

DEPARTMENT OF HEALTH

This is to certify, that a license is hereby granted by the State Department of Health to
to conduct and maintain

KNOXVILLE EYE SURGERY CENTER, LLC

an Ambulatory Surgical Treatment Center KNOXVILLE EYE SURGERY CENTER, LLC

Located at 140 CAPITAL DRIVE, SUITE 2, KNOXVILLE

County of KNOX, Tennessee.

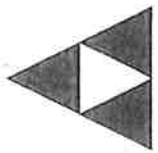
This license shall expire JUNE 27, 2017, *and is subject*
to the provisions of Chapter 11, Tennessee Code Annotated. This license shall not be assignable or transferable,
and shall be subject to revocation at any time by the State Department of Health, for failure to comply with the
laws of the State of Tennessee or the rules and regulations of the State Department of Health issued thereunder.

In Witness Whereof, we have hereunto set our hand and seal of the State this 20TH *day of* APRIL, 2016.
In the Specialty(ies) of: OPHTHALMOLOGY



By *James J. Davis, MPH*
DIRECTOR, DIVISION OF HEALTH CARE FACILITIES

By *Mark D. Davis*
COMMISSIONER



ACCREDITATION
ASSOCIATION

for AMBULATORY HEALTH CARE, INC.

grants this

CERTIFICATE OF ACCREDITATION

to

KNOXVILLE EYE SURGERY CENTER, LLC

D/B/A TENNESSEE VALLEY EYE CENTER

140 CAPITOL DR, SUITE 2

KNOXVILLE, TN 37922-3572

*In recognition of its commitment to high quality of care and substantial compliance
with the Accreditation Association for Ambulatory Health Care standards for ambulatory health care organizations.*

73756

Organization Identification Number


FRANK J. CHAPMAN, MEd

Chair of the Board



NOVEMBER 1, 2018

The Award of Accreditation expires on the above date


STEPHEN A. MARTIN, JR., F.D., M.P.H.

President and CEO

ASSOCIATION MEMBERS

ASCA Foundation • American Academy of Cosmetic Surgery • American Academy of Dental Group Practice • American Academy of Dermatology
American Academy of Facial Plastic and Reconstructive Surgery • American Association of Oral and Maxillofacial Surgeons • American College of Gastroenterology
American College Health Association • American College of Mohs Surgery • American Congress of Obstetricians & Gynecologists • American Dental Association
American Gastroenterological Association • American Society of Anesthesiologists • American Society for Dermatologic Surgery Association
American Society for Gastrointestinal Endoscopy • Association of periOperative Registered Nurses • Society for Ambulatory Anesthesia



5250 OLD ORCHARD ROAD, SUITE 200 • SKOKIE, IL 60077

PHONE: 847/853-6060 • E-MAIL: INFO@AAAHC.ORG • WEB SITE: WWW.AAAHC.ORG

Attachment B.Orderly Development.D.2



STATE OF TENNESSEE
DEPARTMENT OF HEALTH
OFFICE OF HEALTH LICENSURE AND REGULATION
EAST TENNESSEE REGION
7175 STRAWBERRY PLAINS PIKE, SUITE 103
KNOXVILLE, TN 37914

October 23, 2015

Ms. Melanie B. Burgess, Administrator
Knoxville Eye Surgery Center, LLC
140 Capital Drive, Suite 2
Knoxville, TN 37922

Provider # 44C0001089

Dear Ms. Burgess:

The East Tennessee Regional Office of Health Care Facilities conducted a recertification survey on August 10 – 11 and 28, 2015. A Health desk review of your plan of correction for the deficiencies cited as a result of the survey was conducted on October 2, 2015. Fire Safety desk review was conducted on October 12, 2015. Based on the reviews, we are accepting your plan of correction and your facility is in compliance with all participation requirements as of September 18, 2015.

If you should have any questions, please contact the East Tennessee Regional Office at (865) 594-9396.

Sincerely,

Karen B. Kirby, R.N.
Regional Administrator
East TN Health Care Facilities

KBK:cvb

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE & MEDICAID SERVICES

PRINTED: 08/19/2015
FORM APPROVED
OMB NO. 0938-0391

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: 44C0001089	(X2) MULTIPLE CONSTRUCTION A. BUILDING _____ B. WING _____	(X3) DATE SURVEY COMPLETED 08/11/2015
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NAME OF PROVIDER OR SUPPLIER

KNOXVILLE EYE SURGERY CENTER, LLC

STREET ADDRESS, CITY, STATE, ZIP CODE

**140 CAPITAL DRIVE, SUITE 2
KNOXVILLE, TN 37922**

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETION DATE
Q 241	<p>416.51(a) SANITARY ENVIRONMENT</p> <p>The ASC must provide a functional and sanitary environment for the provision of surgical services by adhering to professionally acceptable standards of practice.</p> <p>This STANDARD is not met as evidenced by: Based on review of facility policy, review of facility biological testing logs, observation, and interview, the facility failed to ensure daily biological testing was performed for four of four steam sterilizers; and failed to ensure clean instruments were not packaged in the soiled dirty workroom.</p> <p>The findings included:</p> <p>Review of facility policy "Sterilizer Maintenance and Monitoring" last revised on 08/06/06, revealed "...maintain all records for the time specified by local, state, and federal regulations..."</p> <p>Review of the facility Steam Sterilizer Record Keeping logs for May-August 2015, revealed the biological daily testing was not documented as completed for 8/6/15.</p> <p>Interview with the Sterile Central Supply Technician (CST) on 8/11/15 at 12:45 PM, in the Sterile Central Supply Room, confirmed the biological testing log for 8/6/15 was not completed.</p> <p>Interview with the Director of Nursing (DON) on 8/11/15 at 2:20 PM, in the DON office, confirmed the Steam Sterilizer Record Keeping log was not complete to indicate the daily biological testing</p>	Q 241	<p>Q241:</p> <ul style="list-style-type: none"> • The 3M Attest indicators showing that biological testing was performed on 8/6/15 were located to ensure proper testing had been done, although not documented. • A change was made in our process, making the surgical technician who starts the biological testing each day responsible for verifying its completion and documenting it in the log, eliminating confusion. • Every surgical tech was trained on the updated process, as well as retrained in the importance of documentation. • Director of Nursing will perform bi-weekly checks of Attest log to monitor adherence. 	9/16/15

LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE

TITLE

(X6) DATE

Melanie B. Buz

Administrator

Any deficiency statement ending with an asterisk (*) denotes a deficiency which the institution may be excused from correcting providing it is determined that other safeguards provide sufficient protection to the patients. (See instructions.) Except for nursing homes, the findings stated above are disclosable 90 days following the date of survey whether or not a plan of correction is provided. For nursing homes, the above findings and plans of correction are disclosable 14 days following the date these documents are made available to the facility. If deficiencies are cited, an approved plan of correction is requisite to continued program participation.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE & MEDICAID SERVICES

PRINTED: 08/19/2015
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OMB NO. 0938-0391

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NAME OF PROVIDER OR SUPPLIER

KNOXVILLE EYE SURGERY CENTER, LLC

STREET ADDRESS, CITY, STATE, ZIP CODE

**140 CAPITAL DRIVE, SUITE 2
KNOXVILLE, TN 37922**

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Q 241	<p>Continued From page 1</p> <p>was performed on 8/6/15 and the facility's policy was not followed.</p> <p>Observation on 8/11/15 at 12:55 PM, in the Soiled Dirty Workroom, revealed the dirty used instruments were being cleaned in the Soiled Dirty Workroom by the CST. Further observation revealed, after cleaning, the instruments were packaged in preparation for the autoclave on a table beside an uncovered dirty trash can in the Soiled Dirty Workroom.</p> <p>Interview with the CST on 8/11/15 at 12:55 PM, in the Soiled Dirty Workroom, revealed the CST cleaned the dirty instruments in the room and then placed the clean instruments in the peel packs for sterilization in the Soiled Dirty Workroom. Further interview revealed "...after they are placed in the peel packs I take the instruments through the door into the clean side and then put them into the autoclave for sterilization..." Further interview confirmed the uncovered dirty trash can was located next to the table where clean instruments were stored.</p> <p>Interview with the DON on 8/11/15 at 1:10 PM, in the DON office, revealed "...I have been looking at this...we probably need to be packaging them in the clean side...the trash can should be covered..." Further interview confirmed the clean instruments were packaged in the peel packs in the Soiled Dirty Workroom.</p>	Q 241	<p><u>Q241:</u></p> <p>Dirty instruments are now being cleaned in the decontamination room. A covered trash can was purchased and is now being used in the decontamination room.</p> <p>Following being cleaned in the decontamination room, instruments are transferred to a clean room for packaging prior to sterilization.</p> <p>Monitoring: This is a permanent change in location. DON and Quality Manager will observe compliance through routine or audits/observation (once each week).</p>	

Division of Health Care Facilities

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: TNP53593	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____ B. WING: _____	(X3) DATE SURVEY COMPLETED 08/11/2015
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NAME OF PROVIDER OR SUPPLIER

STREET ADDRESS, CITY, STATE, ZIP CODE

KNOXVILLE EYE SURGERY CENTER, LLC

**140 CAPITAL DRIVE, SUITE 2
KNOXVILLE, TN 37922**

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
A 001	1200-8-10 Initial This Rule is not met as evidenced by: During an Annual licensure survey conducted on August 10-11, 2015, at Knoxville Eye Surgery Center, no deficiencies were cited under 1200-8-10, Ambulatory Surgery Treatment Centers.	A 001		

Division of Health Care Facilities

LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE

TITLE

(X6) DATE

Melanie B. Bue

Administrator

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE & MEDICAID SERVICES

PRINTED: 09/02/2015
FORM APPROVED
OMB NO. 0938-0391

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: 44C0001089	(X2) MULTIPLE CONSTRUCTION A. BUILDING 01 - MAIN B. WING _____		(X3) DATE SURVEY COMPLETED 08/28/2015
NAME OF PROVIDER OR SUPPLIER KNOXVILLE EYE SURGERY CENTER, LLC			STREET ADDRESS, CITY, STATE, ZIP CODE 140 CAPITAL DRIVE, SUITE 2 KNOXVILLE, TN 37922		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETION DATE	
K 000	INITIAL COMMENTS During the annual recertification survey on 8/28/15, the Knoxville Eye Surgery Center had no deficiencies cited in the Life Safety Code 2000 Ambulatory Surgical Center existing regulations.	K 000			

LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE

TITLE

(X6) DATE

Melanie S. Bue

Administrator

Any deficiency statement ending with an asterisk (*) denotes a deficiency which the institution may be excused from correcting providing it is determined that other safeguards provide sufficient protection to the patients. (See instructions.) Except for nursing homes, the findings stated above are disclosable 90 days following the date of survey whether or not a plan of correction is provided. For nursing homes, the above findings and plans of correction are disclosable 14 days following the date these documents are made available to the facility. If deficiencies are cited, an approved plan of correction is requisite to continued program participation.

Division of Health Care Facilities

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: TNP53593	(X2) MULTIPLE CONSTRUCTION A. BUILDING: 01 - MAIN B. WING _____	(X3) DATE SURVEY COMPLETED 08/28/2015
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NAME OF PROVIDER OR SUPPLIER

STREET ADDRESS, CITY, STATE, ZIP CODE

KNOXVILLE EYE SURGERY CENTER, LLC

**140 CAPITAL DRIVE, SUITE 2
KNOXVILLE, TN 37922**

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A1404	<p>1200-8-10-14 (1)(d) Disaster Preparedness</p> <p>(1) The administration of every facility shall have in effect and available for all supervisory personnel and staff, written copies of the following required disaster plans for the protection of all persons in the event of fire and other emergencies for evacuation to areas of refuge and/or evacuation from the building. A detailed log with staff signatures of training received shall be maintained. All employees shall be trained annually as required in the following plans and shall be kept informed with respect to their duties under the plans. A copy of the plans and the specific emergency numbers related to that type of disaster shall be readily available at all times. Each of the following plans shall be exercised annually:</p> <p>(d) Earthquake Disaster Procedures Plan:</p> <ol style="list-style-type: none"> Staff duties; Evacuation procedures; Safety procedures; Emergency services. <p>This Rule is not met as evidenced by: Based on record review, the facility failed to conduct earthquake drills annually.</p> <p>The findings include:</p> <p>Record review on 8/28/15 at 1:30 pm revealed that the facility failed to exercise earthquake drills annually. There was no documentation to indicate an earthquake drill has been conducted since 2011.</p>	A1404	<p><u>A14014:</u></p> <p>• An earthquake drill was scheduled and held on September 18, 2015. Education regarding earthquake preparedness and appropriate response to an earthquake has been developed and distributed to the employees.</p> <p>• Earthquake drills have been added to our matrix of annual required activities/ training, and the Quality and Risk Manager has been made responsible for ensuring that a drill is completed annually.</p> <p>• Adherence will be monitored by Quality Committee through annual report-outs.</p>	9/18/15

Division of Health Care Facilities

LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE

TITLE

(X6) DATE

STATE FORM

6899

QQFY21

If continuation sheet 1 of 2

Division of Health Care Facilities

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: TNP53593	(X2) MULTIPLE CONSTRUCTION A. BUILDING: 01 - MAIN B. WING _____	(X3) DATE SURVEY COMPLETED 08/28/2015
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NAME OF PROVIDER OR SUPPLIER

STREET ADDRESS, CITY, STATE, ZIP CODE

KNOXVILLE EYE SURGERY CENTER, LLC

**140 CAPITAL DRIVE, SUITE 2
KNOXVILLE, TN 37922**

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A1404	Continued From page 1 This finding was verified and acknowledged by the executive director during the exit interview on 8/28/15.	A1404		



State of Tennessee

Health Services and Development Agency

Andrew Jackson, 9th Floor, 502 Deaderick Street, Nashville, TN 37243

www.tn.gov/hsda

Phone: 615-741-2364

Fax: 615-741-9884

March 1, 2017

Melanie Burgess
Knoxville Eye Surgery Center, LLC
140 Capital Drive
Knoxville, TN 37922

RE: Certificate of Need Application -- Knoxville Eye Surgery Center, LLC., d/b/a Tennessee Valley Eye Center - CN1702-010

The replacement of an ambulatory surgical treatment center (ASTC) to be located at 160 Capital Drive, Knoxville (Knox County), TN. The proposed replacement ASTC will expand from four operating rooms to six operating rooms and will continue to function as single specialty ophthalmology ASTC. The estimated project cost is \$7,063,651.

Dear Ms. Burgess:

This is to acknowledge the receipt of supplemental information to your application for a Certificate of Need. Please be advised that your application is now considered to be complete by this office.

Your application is being forwarded to Trent Sansing at the Tennessee Department of Health for Certificate of Need review by the Division of Policy, Planning and Assessment. You may be contacted by Mr. Sansing or someone from his office for additional clarification while the application is under review by the Department. Mr. Sansing's contact information is Trent.Sansing@tn.gov or 615-253-4702.

In accordance with Tennessee Code Annotated, §68-11-1607, et seq., as amended by Public Chapter 780, the 60-day review cycle for this project will begin on March 1, 2017. The first 60 days of the cycle are assigned to the Department of Health, during which time a public hearing may be held on your application. You will be contacted by a representative from this Agency to establish the date, time and place of the hearing should one be requested. At the end of the 60-day period, a written report from the Department of Health or its representative will be forwarded to this office for Agency review. You will receive a copy of their findings. The Health Services and Development Agency will review your application on June 28, 2017.

Any communication regarding projects under consideration by the Health Services and Development Agency shall be in accordance with T.C.A. § 68-11-1607(d):

- (1) No communications are permitted with the members of the agency once the Letter of Intent initiating the application process is filed with the agency. Communications between agency members and agency staff shall not be prohibited. Any communication received by an agency member from a person unrelated to the applicant or party opposing the application shall be reported to the Executive Director and a written summary of such communication shall be made part of the Certificate of Need file.
- (2) All communications between the contact person or legal counsel for the applicant and the Executive Director or agency staff after an application is deemed complete and placed in the review cycle are prohibited unless submitted in writing or confirmed in writing and made part of the Certificate of Need application file. Communications for the purposes of clarification of facts and issues that may arise after an application has been deemed complete and initiated by the Executive Director or agency staff are not prohibited.

Should you have questions or require additional information, please contact me.

Sincerely,

A handwritten signature in black ink that reads "Melanie M. Hill" followed by a stylized monogram "MF".

Melanie M. Hill
Executive Director

cc: Trent Sansing, TDH/Health Statistics, PPA



State of Tennessee

Health Services and Development Agency

Andrew Jackson, 9th Floor, 502 Deaderick Street, Nashville, TN 37243
www.tn.gov/hsda Phone: 615-741-2364 Fax: 615-741-9884

MEMORANDUM

TO: Trent Sansing, CON Director
Office of Policy, Planning and Assessment
Division of Health Statistics
Andrew Johnson Tower, 2nd Floor
710 James Robertson Parkway
Nashville, Tennessee 37243

FROM: Melanie M. Hill *MMH/WF*
Executive Director

DATE: March 1, 2017

RE: Certificate of Need Application
Knoxville Eye Surgery Center, LLC., d/b/a Tennessee Valley Eye
Center - CN1702-010

Please find enclosed an application for a Certificate of Need for the above-referenced project.

This application has undergone initial review by this office and has been deemed complete. It is being forwarded to your agency for a sixty (60) day review period to begin on March 1, 2017 and end on May 1, 2017.

Should there be any questions regarding this application or the review cycle, please contact this office.

Enclosure

cc: Melanie Burgess



State of Tennessee

Health Services and Development Agency

Andrew Jackson Building, 9th Floor, 502 Deaderick Street, Nashville, TN 37243

www.tn.gov/hsda Phone: 615-741-2364 Fax: 615-741-9884

FEB 10 '17 AM 10:25

LETTER OF INTENT

The Publication of Intent is to be published in the Knoxville News Sentinel, which is a newspaper of general circulation in Knox County, Tennessee, on or before February 10, 2017, for one day.
(County) (Month/Day) (Year)

This is to provide official notice to the Health Services and Development Agency and all interested parties, in accordance with T.C.A. § 68-11-1601 et seq., and the Rules of the Health Services and Development Agency, that:

Knoxville Eye Surgery Center, LLC, d/b/a Tennessee Valley Eye Center, single specialty ambulatory
(Name of Applicant) (Facility Type- Existing)

surgical treatment center owned by: Knoxville Eye Surgery Center, LLC with an ownership type of Limited Liability Corporation and to be managed by: Knoxville Eye Surgery Center, LLC intends to file an application for a Certificate of Need for: a replacement ambulatory surgical treatment center to be located at 160 Capital Drive, Knoxville, TN 37922. The replacement ASTC will be expanded from four operating rooms to six operating rooms and will continue to function as a single specialty ophthalmology ambulatory surgical treatment center. No new services are being initiated. The proposed project cost is \$7,063,651.

The anticipated date of filing the application is: February 15, 2017

The contact person for this project is Melanie B. Burgess Administrator
(Name) (Title)

Who may be reached at: Knoxville Eye Surgery Center, LLC 140 Capital Drive
(Company Name) (Address)

Knoxville TN 37922
(City) (State) (Zip Code)

(865) 251-0338
(Phone Number)

(Signature)

February 8, 2017
(Date)

melanieb@tveyecenter.com
(E-mail Address)

The Letter of Intent must be filed in triplicate and received between the first and tenth day of the month. If the last day for filing is a Saturday, Sunday, or State Holiday, filing must occur on the previous business day. File this form at the following address:

Health Services and Development Agency
Andrew Jackson Building, 9th Floor

**502 Deaderick Street
Nashville, Tennessee 37243**

FEB 10 '17 AM 10:25

The published Letter of Intent must contain the following statement pursuant to T.C.A. § 68-11-1607(c)(1).
(A) Any health care institution wishing to oppose a Certificate of Need application must file a written notice with the Health Services and Development Agency no later than fifteen (15) days before the regularly scheduled Health Services and Development Agency meeting at which the application is originally scheduled; and (B) Any other person wishing to oppose the application must file written objection with the Health Services and Development Agency at or prior to the consideration of the application by the Agency.

Supplemental- #1 -ORIGINAL-

Knoxville Eye Surgery
Center, LLC d/b/a
Tennessee Valley Eye
Center

CN1702-010



Tennessee Valley
Eye Center
Advanced Surgery and Eye Care

SUPPLEMENTAL #1
February 27, 2017
10:46 am
FEB 27 11 AM 10:46

February 24, 2017

Mr. Philip Earhart, HSD Examiner
Tennessee Health Services and Development Agency
Andrew Jackson Building, 9th Floor
502 Deaderick Street
Nashville, TN 37243

Re: Certificate of Need Application CN1702-010
Knoxville Eye Surgery Center, LLC d/b/a Tennessee Valley Eye Center

Dear Mr. Earhart:

Enclosed please find our response to your request for supplemental information regarding CN1702-010.
Please do not hesitate to contact me if you have additional questions or need additional information.
We appreciate your consideration of our application.

Regards,



Melanie B. Burgess
Administrator

February 27, 2017

10:46 am

FEB 27 7:16:46

AFFIDAVIT

STATE OF TENNESSEE

COUNTY OF Knox

NAME OF FACILITY: Knoxville Eye Surgery Center, LLC

I, Melanie B. Burgess, after first being duly sworn, state under oath that I am the applicant named in this Certificate of Need application or the lawful agent thereof, that I have reviewed all of the supplemental information submitted herewith, and that it is true, accurate, and complete.

Melanie B. Burgess
Signature/Title

Sworn to and subscribed before me, a Notary Public, this the 24th day of February, 2017, witness my hand at office in the County of Knox, State of Tennessee.

Philip T. Higgs
NOTARY PUBLIC

My commission expires April 28, 2020.

HF-0043

Revised 7/02





State of Tennessee
Health Services and Development Agency
 Andrew Jackson Building, 9th Floor
 www.tn.gov/hsda Phone: 615-741-2364/Fax: 615-741-9884

February 24, 2017

Melanie B. Burgess
 Knoxville Eye Surgery Center, LLC
 140 Capital Drive
 Knoxville, TN 37922

RE: Certificate of Need Application CN1702-010
 Knoxville Eye Surgery Center, LLC d/b/a Tennessee Valley Eye Center

Dear Ms. Burgess:

This will acknowledge our February 15, 2017 receipt of your application for a Certificate of Need for a replacement ambulatory surgical treatment center (ASTC) to be located at 160 Capital Drive, Knoxville (Knox County), TN. The proposed replacement ASTC will expand from four operating rooms to six operating rooms and will continue to function as single specialty ophthalmology ASTC.

Several items were found which need clarification or additional discussion. Please review the list of questions below and address them as indicated. The questions have been keyed to the application form for your convenience. I should emphasize that an application cannot be deemed complete and the review cycle begun until all questions have been answered and furnished to this office.

Please submit responses in triplicate by 12 PM, Monday February 27, 2017. If the supplemental information requested in this letter is not submitted by or before this time, then consideration of this application may be delayed into a later review cycle.

1. Section A, Executive Summary, A. Overview

The referenced listing of current physician owners listed in Attachment A.3.A.2A. is noted. However, it appears John C. Hoskins, MD's license expired November 30, 2016. Please clarify.

In reviewing the list of owners shown in Attachment A.3.A.2a, John Hoskins is not listed. A duplicate of the current ownership listing is attached as Attachment 1A. It may be that the list being referenced is an exhibit to the Operating Agreement, which was attached as Attachment A.4.B. Please note that the list of owners attached to the Operating Agreement is not current, but rather was current at the time that the Operating Agreement was signed. Several

physicians who were on that listing have since retired (as has John Hoskins, MD) and their licenses expired. For the current list of owners, please use the list shown in Attachment A.3.A.2a, which is also attached to these Supplemental Responses as Attachment 1A.

The applicant refers to a listing of current physician owners of KESC. However, there appears to be some owners who are not licensed. Please clarify.

It appears that the older list that is an exhibit of the Operating Agreement is being referenced. Please refer to the current list, which does not include any retired physicians and is updated to reflect the current owners, all of whom are licensed. The list was included in the original application under Attachment A.3.A.2a, and is included in these Supplemental Responses as Attachment 1A.

The applicant refers to Attachment A.3.A.2b. However, the attachment could not be located in the application. Please clarify.

The referenced attachment was missed in error. The patient origin by county and service area calculation is attached as Attachment 1B.

2. Section A, Executive Summary, B. Rationale for Approval (1) Need

It is noted in 2016 KESC performed 2,293 cases per operating room. Please clarify if this is per calendar year or fiscal year 2016.

This is neither calendar year nor fiscal year, but rather the 12-month reporting period for the most current publicly available Tennessee Joint Annual Reports for Ambulatory Surgical Treatment Centers, which was July 1, 2014 – June 30, 2015. In the summary of statement of need, it was stated in error that the 2,293 cases per operating room were performed in 2016. It should have stated that the 2,293 cases per operating room were performed during the last reporting period for Joint Annual Reports that is publicly available.

For the sake of clarity, KESC's fiscal year matches the calendar year. If the same calculation is performed for the calendar/fiscal year 2016, the total is 2,397 surgical cases per operating room (9,589 total surgical cases, divided by four operating rooms).

3. Section B, Need Item 1(Specific Criteria –ASTC) Question #1 Need

It is noted the applicant has one procedure room that performed 1,002 procedures in 2016. Please address the need for this procedure room in Year One

and Year Two of the proposed project using the 1,867 case per procedure room need criteria.

During the calendar year 2016, KESC performed 1,002 procedures in the procedure room. It is estimated that number will grow in 2017 to 1,041, and then in the first two years of the project will be 1,082 and 1,124. These volumes reflect a growth rate that matches the projected growth in the age 65+ population for the primary service area, which is growing at approximately 3.8% per year for the next five years.

At the estimated volumes in each of the first two years of the project, the utilization for the procedure room is projected to be:

Project Year 1 – 57.95%

Project Year 2 – 60.2%

While the optimum utilization of the procedure room is not expected to be met, the procedure room is important to KESC's ability to be able to provide the full complement of ophthalmology surgical services. The procedure room is only used for YAG laser procedures, which are routinely required to treat post-cataract surgery posterior capsular opacification, some types of acute angle-closure glaucoma, eye floaters, and certain cases of diabetic retinopathy. No additional procedure room space is proposed through this application.

4. Section B, Need Item 1(Specific Criteria –ASTC) Question #6 Access to ASTCs

Please describe the relationship of the ASTC site to public roads, highways, and interstate system.

The proposed replacement ASTC site is adjacent to the current site, which is situated on Capital Drive in the western portion of Knoxville in Knox County. Capital Drive is accessed from Kingston Pike, which is the major commercial artery running east-west, connecting one end of Knox County to the other. Capital Drive is also one block from the intersections of Kingston Pike, Interstate 40/75, and Pellissippi Parkway (Highway 140). I-40/75 provides easy interstate access to the site from every county in the service area, and Pellissippi Parkway gives quick access to the site from both Blount and Anderson Counties.

5. Section B, Need Item C.

The county level map on page 19 is noted. However, please provide a map that provides distinctive highlighting/ markings to readily differentiate the service area counties from the other non- service area counties.

A highlighted map is attached as Attachment 5.

6. Section B, Need Item D (1).

The demographic variable/geographic area chart is noted. However, please revise to reflect 2017 as the current year and 2021 as the projected year.

The demographic chart has been updated to reflect 2017 as the current year and 2021 as the projected year. It is attached as Attachment 6.

7. Section B, Need Item F

Which hospitals in the service area provide ophthalmic surgery?

The hospitals in the service area providing ophthalmic surgery are:

- *University of Tennessee Medical Center (Knox County, Level I Trauma Center)*
- *Tennova Physicians Regional Medical Center (Knox County – performed in the hospital-based outpatient surgery department that was formerly St. Mary’s ASC)*
- *Tennova North Knoxville Medical Center (Knox County – perform YAG laser procedures only; no other ophthalmic surgery equipment available)*
- *Morristown Hamblen Hospital (Hamblen County)*
- *Blount Memorial Medical Center (Blount County – performed in the hospital-based outpatient surgery center)*

It should be noted that surgeons affiliated with KESC provide all ophthalmology on-call services for the University of Tennessee Medical Center, the area’s only Level I trauma center.

Please clarify if there have been any reduction of ophthalmic ORs in the service area from 2013 to 2015?

Between 2013 and 2015, the only reduction in ophthalmic operating rooms in the service area occurred early in 2013, when Advanced Family Surgery Center, a multi-specialty ASTC in Anderson County, lost its ophthalmology medical staff so stopped performing ophthalmology surgery. There has been no other reduction in ophthalmic operating rooms in the service area, although two formerly free-standing ASTCs, Maryville Surgery Center (Blount County, multi-specialty) and St. Mary’s Ambulatory Surgical Center (Knox County, multi-specialty) have become hospital-owned outpatient surgery centers. While both locations still have ophthalmology surgery equipment and have some volume of ophthalmology surgery, it should be noted that the shift to hospital ownership has effectively doubled the cost of the facility fee to the healthcare system for patients having ophthalmology surgery there, and local ophthalmologists are

being required by some payors and referrers to perform ophthalmology surgery in an ASTC, due to this cost difference.

Please complete the following table.

ASTC	County	Oper. Rms/ Proc. Rms	2013 Cases PR+OR	2014 Cases PR+OR	2015 Cases PR+OR	13'-15' % Change
Single Specialty						
Eye Surgery Center of East Tennessee	Knox	2/1=3				
Ophthalmology			3,710	4,572	3,792	2.2%
Total Outpatient Surgeries			3,710	4,572	3,792	2.2%
% Ophthalmologic Procedures			100%	100%	100%	
Knoxville Eye Surgery Center	Knox	4/1=5				
Ophthalmology			10,187	9,628	10,060	-1.2%
Total Outpatient Surgeries			10,187	9,628	10,060	-1.2%
% Ophthalmologic Procedures			100%	100%	100%	
Southeast Eye Surgery Center, LLC	Knox	1/1=2				
Ophthalmology			N/A	687	2,034	N/A
Total Outpatient Surgeries			N/A	687	2,034	N/A
% Ophthalmologic Procedures				100%	100%	
The Eye Surgery Center of Oak Ridge	Anderson	2/1=3				
Ophthalmology			3,251	3,302	3,518	8.21%
Total Outpatient Surgeries			3,251	3,302	3,518	8.21%
% Ophthalmologic Procedures			100%	100%	100%	
Single Specialty Subtotal			17,148	18,189	19,404	13.16%
Multi-Specialty						
Physicians Surgery Center of Knoxville	Knox	5/0=5				
Ophthalmology			581	912	497	-14.46%
Total Outpatient Surgeries			4,670	5,102	4,472	-4.24%
% Ophthalmologic Procedures			12.44%	17.88%	11.11%	
Multi-Specialty Subtotal (Ophthalmology Cases only)			581	912	497	-14.46%
Total Service Area		14/ 4 = 18	17,729	19,101	19,901	12.25%

As an additional note to this chart, for the "2016" Joint Annual Report reporting period (July 1, 2015 - June 30, 2016), KESC's total cases (Procedure Room + Operating Rooms) was 10,616, making the change in volume from 2013 to 2016 an increase of 4.2%. Data is not yet publicly available for that same time period for other providers.

KESC discovered a system issue when submitting this year's Joint Annual Report that had created errors in the reported number of cases performed in previous years. Corrected utilization numbers were submitted to the State, and those corrected numbers are reflected in the chart above, as well as throughout the original Certificate of Need application.

Please complete the following table for ASTC's in the proposed 9 county service area that currently provide Ophthalmologic procedures.

ASTC	County	Operating Rooms 2015			Procedure Rooms 2015		
		# OR s	Cases	% of 884 Standard	# PRs	Cases	% pf 1,867 Standard
Single Specialty							
Eye Surgery Center of East Tennessee	Knox	2	2,930	165.7%	1	862	46.2%
Knoxville Eye Surgery Center	Knox	4	9,170	259.3%	1	890	47.7%
Southeast Eye Surgery Center, LLC	Knox	1	1,843	208.5%	1	191	10.2%
The Eye Surgery Center of Oak Ridge	Anderson	2	2,495	141.1%	1	1,023	54.8%
Subtotal (Single-Specialty)		9	16,438	206.6%	4	2,966	39.7%
Multi-Specialty							
Physicians Surgery Center of Knoxville	Knox	5	4,472	101.2%	N/A		
Subtotal (Multi-Specialty)		5	4,472	101.2%	0	0	N/A
Grand Total Surgeries		14	20,910	168.9%	4	2,966	39.7%
Cases per OR/PR			1,494			742	

In a previous application (CN1611-038A), The Eye Surgery Center of Oak Ridge was identified as a multi-specialty ASTC, because both ophthalmology and plastic surgery cases are reported in their Joint Annual Reports. However, The Eye Surgery Center of Oak Ridge was approved as a single specialty, ophthalmology ASTC, and it functions as a single-specialty ASTC, just as KESC does. Both ASTCs report both ophthalmology and plastic surgery cases because cases that ophthalmologists perform to correct eyelid issues, including blepharoplasty, removal of tumors or chalasions from the eyelids, are coded using CPT codes that fall within the plastic surgery category, even though they are performed by ophthalmologists and are within a properly trained ophthalmologists credentialing and scope of practice. Therefore, the chart above categorizes The Eye Surgery Center of Oak Ridge as a single-specialty ASTC.

Please complete the following table that indicates the overall ASTC utilization trend for the 9-county proposed service area.

**9 County Service Area Patient Utilization
2013-2015**

County	ASTC	2013			2014			2015			% change 13'-15'
		Oper. Rms/	Proc. Rms	Total Cases	Oper. Rms/	Proc. Rms	Total Cases	Oper. Rms/	Proc. Rms	Total Cases	
Anderson	Single-Specialty	2	1	3,251	2	1	3,302	2	1	3,518	8.21%
Anderson	Multi-specialty	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	Total	2	1	3,251	2	1	3,302	2	1	3,518	8.21%
Knox	Single-Specialty	6	2	13,897	7	3	14,887	7	3	15,886	14.31%
Knox	Multi-specialty	5	0	581	5	0	912	5	0	497	-14.46%
	Total	11	2	14,478	12	3	15,799	12	3	16,383	13.36%
Service Area	Single-Specialty	8	3	17,148	9	4	18,189	9	4	19,404	13.16%
	Multi-specialty	5	0	581	5	0	912	5	0	497	-14.46%
	Grand Total	13	3	17,729	14	4	19,101	14	4	19,901	12.25%

*****For each county's multi-specialty volumes, only ophthalmology surgery is included in the numbers above.***

The chart above reflects a consistent comparison, across the time period from 2013 to 2015, of ASTC's providing ophthalmology surgery. During 2013, Maryville Surgical Center in Blount county and St. Mary's Ambulatory Surgery Center in Knox county both converted from freestanding ASTCs to hospital outpatient surgery departments. Volumes from those centers/hospital departments are not included in the chart above, in the interest of providing an accurate picture of the volume trend within ASTCs in the primary service area over the time period.

8. Section B, Economic Feasibility, Item A (1)

There are calculation errors in the Project Costs Chart. Please correct and submit a corrected Project Costs Chart.

A corrected Project Costs Chart is attached as Attachment 8.

9. Section B, Economic Feasibility, Item C. Historical Data Chart

The Historical Data Chart is noted. However, please provide an amount for the "Total Other Deductions" line for the years 2014, 2015, and 2016 and provide a replacement page 28.

A replacement page 28 is attached as Attachment 9.

10. Section B, Economic Feasibility, Item D. Projected Data Chart

The Projected Data Chart is noted. However, the Net Income (Loss) amount on page 30 is different from the carryover amount on page 31. Also, please provide an amount for "Total Other Deductions" for the Year One and Year Two. Please revise and submit replacement pages.

A replacement Projected Data Chart is attached as Attachment 10.

The Historical Data Chart is noted. Also, please provide an amount for "Total Other Deductions" for the Year 2014, 2015, and 2016 and provide a replacement page 28.

See item number 9 above.

11. Section B, Economic Feasibility, Item E (1). Average gross charge, average deduction from operating revenue, and average net charge.

The chart on page 32 noting the Average Gross Charge, Average Deduction from Operating Revenue, and Average Net Charge for the proposed project does not match the Historical and Projected Data Charts. Please use the gross charge that represents the entire proposed project in your calculations. Please revise and submit a replacement page 32.

A replacement page 32 is attached as Attachment 11.

12. Section B, Economic Feasibility, Item G Projected Payor Mix

The Projected Payor Mix table is noted. However, please use the Projected Data Chart's Year One projected gross operating revenue amount of \$32,938,305 to complete the table. Please correct and submit a replacement page 34.

A replacement page 34 is attached as Attachment 12.

13. Section B. Contribution to Orderly Development Item H.

The staffing table on page 35 is noted. However, there is a calculation error for Year One Direct Care positions. Please correct and submit a replacement page 35.

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A replacement page 35 is attached as Attachment 13.

In accordance with Tennessee Code Annotated, §68-11-1607(c) (5), "...If an application is not deemed complete within sixty (60) days after written notification is given to the applicant by the agency staff that the application is deemed incomplete, the application shall be deemed void." For this application the sixtieth (60th) day after written notification is April 21, 2017. If this application is not deemed complete by this date, the application will be deemed void. Agency Rule 0720-10-.03(4) (d) (2) indicates that "Failure of the applicant to meet this deadline will result in the application being considered withdrawn and returned to the contact person. Re-submittal of the application must be accomplished in accordance with Rule 0720-10-.03 and requires an additional filing fee." Please note that supplemental information must be submitted timely for the application to be deemed complete prior to the beginning date of the review cycle which the applicant intends to enter, even if that time is less than the sixty (60) days allowed by the statute. The supplemental information must be submitted with the enclosed affidavit, which shall be executed and notarized; please attach the notarized affidavit to the supplemental information.

If all supplemental information is not received and the application officially deemed complete prior to the beginning of the next review cycle, then consideration of the application could be delayed into a later review cycle. The review cycle for each application shall begin on the first day of the month after the application has been deemed complete by the staff of the Health Services and Development Agency.

Any communication regarding projects under consideration by the Health Services and Development Agency shall be in accordance with T.C.A. § 68-11-1607(d):

- (1) No communications are permitted with the members of the agency once the Letter of Intent initiating the application process is filed with the agency. Communications between agency members and agency staff shall not be prohibited. Any communication received by an agency member from a person unrelated to the applicant or party opposing the application shall be reported to the Executive Director and a written summary of such communication shall be made part of the certificate of need file.
- (2) All communications between the contact person or legal counsel for the applicant and the Executive Director or agency staff after an application is deemed complete and placed in the review cycle are prohibited unless submitted in writing or confirmed in writing and made part of the certificate of need application file. Communications for the purposes of clarification of facts and issues that may arise after an application has been deemed complete and initiated by the Executive Director or agency staff are not prohibited.

Should you have any questions or require additional information, please do not hesitate to contact this office.

Sincerely,

Phillip Earhart
HSD Examiner

Ms. Melanie Burgess
February 24, 2017
Page 10

Enclosure/PME

SUPPLEMENTAL #1

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Attachment 1A

Knoxville Eye Surgery Center, LLC, d/b/a Tennessee Valley Eye Center
List of Owners

Partner #	Partner Name	Practice Name	Partner % of Profit Sharing	Title	Effective date of ownership	Member of Board of Governors?
1	Albert Holmes, MD	Baptist Eye Surgeons	4.1667%	MD	07/01/1999	
2	Darin S. Smith, MD	Baptist Eye Surgeons	4.1667%	MD	01/01/2000	
3	J. Franklin Murchison, MD	Baptist Eye Surgeons	4.1667%	MD	07/01/1999	Yes
4	L. Nichols Cook, MD	Baptist Eye Surgeons	4.1667%	MD	07/01/1999	Yes
5	Marc Bodenheimer, MD	Baptist Eye Surgeons	4.1667%	MD	09/01/2010	
6	Mark Y. Ivens, MD	Baptist Eye Surgeons	4.1667%	MD	07/01/1999	
7	Paul Pruett, MD	Baptist Eye Surgeons	4.1667%	MD	07/01/2016	
8	R. Gene Price, MD	Knoxville Eye Center	4.1667%	MD	01/01/2000	Yes
9	Gary N. Gitschlag, MD	Knoxville Pediatric Ophthalmology	4.1667%	MD	07/01/1999	
10	James H. Miller, MD	Southeastern Retina Associates	4.1667%	MD	07/01/1999	
11	Joseph M. Googe, MD	Southeastern Retina Associates	4.1667%	MD	07/01/1999	
12	Nicholas G. Anderson, MD	Southeastern Retina Associates	4.1667%	MD	07/01/2007	Yes
13	Robert K. Shuler, Jr., MD	Southeastern Retina Associates	4.1667%	MD	07/01/2014	
14	Stephen L. Perkins, MD	Southeastern Retina Associates	4.1667%	MD	07/01/1999	
15	Tod McMillan, MD	Southeastern Retina Associates	4.1667%	MD	01/01/2000	Yes
16	Steven L. Sterling, MD	Sterling Eye Care	4.1667%	MD	07/01/1999	
17	Bradley L. Pearman, MD	University Eye Specialists	4.1667%	MD	07/01/1999	
18	Charles G. Ange, MD	University Eye Specialists	4.1667%	MD	07/01/1999	
19	David J. Harris, MD	University Eye Specialists	4.1667%	MD	07/01/1999	
20	Herbert J. Glatt, MD	University Eye Specialists	4.1667%	MD	07/01/1999	Yes
21	James M. Rouse, MD	University Eye Specialists	4.1667%	MD	09/01/2013	
22	James T. Doss, Jr., MD	University Eye Specialists	4.1667%	MD	09/01/2013	
23	Jonathon W. Sowell, MD	University Eye Specialists	4.1667%	MD	07/01/1999	
24	Paul D. Froula, MD	University Eye Specialists	4.1667%	MD	07/01/1999	Yes

Totals

100.0%

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Attachment 1B

KESC 2016 Patient Origin with Case Volumes by County

County	#	%	Cum %	
Knox	3,029	43.1%	43.1%	PSA
Blount	919	13.1%	56.2%	
Sevier	547	7.8%	64.0%	
Loudon	468	6.7%	70.7%	
Campbell	240	3.4%	74.1%	
Anderson	238	3.4%	77.5%	
Jefferson	211	3.0%	80.5%	
Claiborne	200	2.8%	83.3%	
Hamblen	186	2.6%	86.0%	
Monroe	144	2.1%	88.0%	SSA
Roane	134	1.9%	89.9%	
Cocke	88	1.3%	91.2%	
Grainger	84	1.2%	92.4%	
Union	61	0.9%	93.2%	
Cumberland	59	0.8%	94.1%	
Greene	56	0.8%	94.9%	
Morgan	50	0.7%	95.6%	
Scott	47	0.7%	96.3%	
McMinn	43	0.6%	96.9%	
Hawkins	41	0.6%	97.5%	
Sullivan	37	0.5%	98.0%	
Fentress	26	0.4%	98.3%	
Washington	22	0.3%	98.7%	
Rhea	18	0.3%	98.9%	
Hancock	15	0.2%	99.1%	
Meigs	10	0.1%	99.3%	
Hamilton	7	0.1%	99.4%	
Putnam	5	0.1%	99.4%	
White	5	0.1%	99.5%	
Bradley	4	0.1%	99.6%	
Unicoi	4	0.1%	99.6%	
Carter	3	0.0%	99.7%	
Davidson	3	0.0%	99.7%	
VanBuren	3	0.0%	99.8%	
Bledsoe	2	0.0%	99.8%	
Obion	2	0.0%	99.8%	
Overton	2	0.0%	99.8%	
Williamson	2	0.0%	99.9%	
Jackson	1	0.0%	99.9%	
Johnson	1	0.0%	99.9%	
Pickett	1	0.0%	99.9%	
Polk	1	0.0%	99.9%	
Rutherford	1	0.0%	99.9%	
Sequatchie	1	0.0%	100.0%	

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Shelby	1	0.0%	100.0%
Smith	1	0.0%	100.0%
Warren	<u>1</u>	0.0%	100.0%
	7,024		

AL	2
GA	11
KY	40
NC	6
VA	63
Other States/Countries	<u>33</u>
Total - Outside TN	155

Attachment 5

A map of Tennessee showing its 95 counties. The counties are labeled with their names. The Nashville area, including Davidson, De Kalb, and parts of several other counties, is highlighted with a thick black border. Other counties shown include Obion, Lake, Weakley, Henry, Carroll, Gibson, Dyer, Crockett, Lauderdale, Tipton, Fayette, Shelby, Hardman, McNairy, Hardin, Wayne, Lawrence, Giles, Lincoln, Moore, Marshall, Bedford, Coffee, Grundy, Sequatchie, Meigs, McMinn, Monroe, Blount, Sevier, Cocke, Greene, Unicoi, Carter, Washington, Sullivan, Johnson, Hancock, Hawkins, Claiborne, Union, Grainger, Hamblin, Jefferson, Anderson, Morgan, Roane, Cumberland, Rhea, Bledsoe, Van, Warren, Buren, Cannon, De Kalb, White, Putnam, Jackson, Overton, Pickett, Fentress, Scott, Campbell, Hancock, Sullivan, Johnson, and others.

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Attachment 6

KESC Primary Service Area Population and Demographic Data

SUPPLEMENTAL #1

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County	Department of Health/Health Statistics							Bureau of the Census				Tenn Care	
	Total Population - Current Year (2017)	Total Population - Projected Year (2021)	Total Population - % Change	Target Population (65+) - Current Year	Target Population (65+) - Projected Year	Target Population - % Change	Target Population Projected Year as a % of Total	Median Age	Median Household Income	Person Below Poverty Level	Person Below Poverty Level as a % of Total	TennCare Enrollees	TennCare Enrollees as % of Population
Knox	472,075	494,508	4.8%	72,869	83,650	14.8%	16.9%	37.2	48,701	75,532	16.0%	82,609	17.5%
Blount	134,882	141,326	4.8%	27,324	31,870	16.6%	22.6%	41.4	48,286	19,018	14.1%	24,102	17.9%
Sevier	102,998	110,270	7.1%	20,322	24,249	19.3%	22.0%	40.9	42,258	15,759	15.3%	22,287	21.6%
Loudon	55,192	58,798	6.5%	15,808	18,639	17.9%	31.7%	46.0	51,107	7,948	14.4%	9,852	17.9%
Campbell	41,559	41,839	0.7%	8,902	9,983	12.1%	23.9%	41.7	32,028	9,642	23.2%	13,891	33.4%
Anderson	78,026	79,397	1.8%	16,061	17,982	12.0%	22.6%	42.6	42,880	13,967	17.9%	17,423	22.3%
Jefferson	56,406	59,005	4.6%	11,874	13,822	16.4%	23.4%	40.8	42,417	9,307	16.5%	13,413	23.8%
Claiborne	34,038	34,917	2.6%	7,046	8,161	15.8%	23.4%	41.1	34,899	7,454	21.9%	9,489	27.9%
Hambien	65,774	67,429	2.5%	12,518	13,754	9.9%	20.4%	39.6	37,617	14,010	21.3%	17,238	26.2%
Service Area Total	1,040,950	1,087,489	4.5%	192,724	222,110	15.2%	20.4%	41.3	42,244	172,636	16.6%	210,304	20.2%
State of TN Total	6,812,005	7,108,031	4.3%	1,091,516	1,266,295	16.0%	17.8%	38.0	45,219	1,198,913	17.6%	1,565,932	23.0%

Svc area growth rate / year

1.1%

3.8%

Attachment 8

February 27, 2017**10:46 am****PROJECT COST CHART**

A. Construction and equipment acquired by purchase:			
1	Architectural and Engineering Fees	\$	371,518
2	Legal, Administrative (Excluding CON Filing Fee), Consultant Fees	\$	283,287
3	Acquisition of Site	\$	-
4	Preparation of Site	\$	677,783
5	Total Construction Costs	\$	3,890,826
6	Contingency Fund	\$	224,555
7	Fixed Equipment (Not included in Construction Contract)	\$	650,814
8	Moveable Equipment (List all equipment over \$50,000 as separate attachments)	\$	604,484
9	Other (Specify)	\$	-
B. Acquisition by gift, donation, or lease:			
1	Facility (inclusive of building and land)	\$	-
2	Building only	\$	-
3	Land only	\$	-
4	Equipment (Specify)	\$	-
5	Other (Specify)	\$	-
C. Financing Costs and Fees:			
1	Interim Financing	\$	160,000
2	Underwriting Costs	\$	-
3	Reserve for One Year's Debt Service	\$	160,000
4	Other (Specify)		
D. Estimated Project Cost (A+B+C)		\$	7,023,267
E.	CON Filing Fee	\$	40,384
F.	Total Estimated Project Cost (D+E)	TOTAL	\$ 7,063,651

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Attachment 9

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NET INCOME (LOSS)	<u>\$ 2,707,270</u>	<u>\$ 2,192,551</u>	<u>\$ 2,856,861</u>
G. Other Deductions			
1. Annual Principal Debt Repayment	<u>\$ 272,534</u>	<u>\$ 281,053</u>	<u>\$ 178,885</u>
2. Annual Capital Expenditure	<u>\$ 36,947</u>	<u>\$ 21,775</u>	<u>\$ 372,325</u>
Total Other Deductions	<u>\$ 309,481</u>	<u>\$ 302,828</u>	<u>\$ 551,210</u>
NET BALANCE	<u>\$ 2,397,789</u>	<u>\$ 1,889,723</u>	<u>\$ 2,305,651</u>
DEPRECIATION	<u>229,052</u>	<u>228,169</u>	<u>246,236</u>
FREE CASH FLOW (Net Balance + Depreciation)	<u>\$ 2,626,841</u>	<u>\$ 2,117,892</u>	<u>\$ 2,551,887</u>

☒ Total Facility☐ Project Only**HISTORICAL DATA CHART - OTHER EXPENSES****OTHER EXPENSES CATEGORIES**

	Year 2014	Year 2015	Year 2016
1. Bank Charges	\$ 20,334	\$ 24,303	\$ 32,075
2. IT Expense	55,048	47,823	62,430
3. Employee Recognition	35,002	25,296	45,718
4. Contract Wages	53,318	150,202	103,922
5. Dues and Subscriptions	22,628	37,614	11,671
6. Insurance	198,196	217,163	233,009
7. Laundry and Uniforms	89,284	85,580	91,058
8. Other Employee Benefits	232,708	242,649	247,271
9. Office Supplies and Postage	82,543	98,840	91,159
10. Repairs and Maintenance	344,863	394,586	322,590
11. Telephone and Utilities	120,539	119,207	121,019
12. Professional Fees	67,127	68,831	63,514
13. Other	<u>(78,555)</u>	<u>(95,273)</u>	<u>(80,901)</u>
Total Other Expenses	\$ 1,243,035	\$ 1,416,821	\$ 1,344,535

Attachment 10

February 27, 2017**10:46 am** ☒ Total Facility
☐ Project Only**PROJECTED DATA CHART**

Give information for the two (2) years following the completion of this proposal. The fiscal year begins in January (Month).

	Year 1	Year 2
A. Utilization Data (Cases)	<u>11,433</u>	<u>11,879</u>
B. Revenue from Services to Patients		
1. Inpatient Services	\$ -	\$ -
2. Outpatient Services	31,511,096	32,740,028
3. Emergency Services	-	-
4. Other Operating Revenue (Rental & Optical Ctr)	<u>1,427,209</u>	<u>1,454,210</u>
Gross Operating Revenue	\$ 32,938,305	\$ 34,194,238
C. Deductions from Gross Operating Revenue		
1. Contractual Adjustments	\$ 19,410,835	\$ 20,167,857
2. Provision for Charity Care	220,578	229,180
3. Provision for Bad Debt	<u>157,555</u>	<u>163,700</u>
Total Deductions	\$ 19,788,968	\$ 20,560,738
NET OPERATING REVENUE	\$ 13,149,337	\$ 13,633,500
D. Operating Expenses		
1. Salaries and Wages		
a. Direct Patient Care	2,468,282	2,542,330
b. Non-Patient Care	846,376	863,304
2. Physician's Salaries and Wages	25,000	25,000
3. Supplies	4,150,179	4,312,077
4. Rent		
a. Paid to Affiliates	-	-
b. Paid to Non-Affiliates	22,700	22,700
5. Management Fees:		
a. Paid to Affiliates	-	-
b. Paid to Non-Affiliates	-	-
6. Other Operating Expenses	<u>1,237,672</u>	<u>1,263,563</u>
Total Operating Expenses	\$ 8,750,209	\$ 9,028,974
E. Earnings Before Interest, Taxes and Depreciation	\$ 4,399,128	\$ 4,604,527
F. Non-Operating Expenses		
1. Taxes	\$ 306,280	\$ 318,225
2. Depreciation	480,430	541,840
3. Interest	207,563	202,125
4. Other Non-Operating Expenses	<u>1,153,216</u>	<u>1,161,897</u>
Total Non-Operating Expenses	\$ 2,147,489	\$ 2,224,087
NET INCOME (LOSS)	\$ 2,251,639	\$ 2,380,440

Chart Continues Onto Next Page

SUPPLEMENTAL #1**February 27, 2017****10:46 am**

NET INCOME (LOSS)	\$ 2,251,639	\$ 2,380,440
G. Other Deductions		
1. Annual Principal Debt Repayment	\$ 267,171	\$ 272,609
2. Annual Capital Expenditure	\$ 35,000	\$ 35,000
Total Other Deductions	\$ 302,171	\$ 307,609
NET BALANCE	\$ 1,949,468	\$ 2,072,831
DEPRECIATION	480,430	541,840
FREE CASH FLOW (Net Balance + Depreciation)	\$ 2,429,898	\$ 2,614,671

☒ Total Facility☐ Project Only**PROJECTED DATA CHART - OTHER EXPENSES****OTHER EXPENSES CATEGORIES**

	Project Yr 1	Project Yr 1
1. Bank Charges	\$ 38,000	\$ 38,000
2. IT Expense	\$ 100,000	\$ 103,000
3. Employee Recognition	\$ 35,000	\$ 36,050
4. Contract Wages	\$ 115,000	\$ 118,450
5. Dues and Subscriptions	\$ 18,000	\$ 15,000
6. Insurance	\$ 250,000	\$ 257,500
7. Laundry and Uniforms	\$ 95,000	\$ 97,850
8. Other Employee Benefits	\$ 255,000	\$ 262,330
9. Office Supplies and Postage	\$ 95,000	\$ 96,711
10. Repairs and Maintenance	\$ 100,000	\$ 100,000
11. Telephone and Utilities	\$ 150,000	\$ 154,500
12. Professional Fees	\$ 70,000	\$ 70,000
13. Other	\$ (83,328)	\$ (85,828)
Total Other Expenses	\$ 1,237,672	\$ 1,263,563

Attachment 11

February 27, 2017**10:46 am**

- ☐ 1) Please identify the project's average gross charge, average deduction from operating revenue, and average net charge using information from the Projected Data Chart for Year 1 and Year 2 of the proposed project. Please complete the following table.

	Previous Year	Current Year	Year One	Year Two	% Change (Current Year to Year 2)
Gross Charge (Gross Operating Revenue/Utilization Data)	\$ 2,885	\$ 2,856	\$ 2,880	\$ 2,878	0%
Deduction from Revenue (Total Deductions/Utilization Data)	\$ 1,742	\$ 1,711	\$ 1,731	\$ 1,731	0%
Average Net Charge (Net Operating Revenue/Utilization Data)	\$ 1,143	\$ 1,145	\$ 1,149	\$ 1,147	0%

- 2) Provide the proposed charges for the project and discuss any adjustment to current charges that will result from the implementation of the proposal. Additionally, describe the anticipated revenue from the project and the impact on existing patient charges.

It is not anticipated that there will be an adjustment to charges as a result of the proposal. The additional revenue from the project is a product of the net charge per case multiplied by the growth in volume. There will be no financial impact of this project to patients. No payer contracts will change, self-pay rates will not be impacted by this project, and KESC's commitment to care for patients on TennCare or through charity care will continue.

- 3) Compare the proposed charges to those of similar facilities in the service area/adjoining service areas, or to proposed charges of projects recently approved by the Health Services and Development Agency. If applicable, compare the proposed charges of the project to the current Medicare allowable fee schedule by common procedure terminology (CPT) code(s).

See the attached table, attachment B.Economic Feasibility.E.3, comparing KESC's gross charges to the current Medicare allowable fee schedule for the top 20 CPT codes performed. Detailed charges by CPT code for similar facilities are not readily available, but overall gross and net charges per case are similar across all single-specialty ophthalmology ASTCs in the primary service area. When comparing gross and net charges across all providers, it should be noted that KESC is the only ophthalmology ASTC offering cataract, glaucoma, plastics, cornea, retinal, and strabismus surgery. A chart showing the gross and net charges per case for each ophthalmology ASTC in the service area is shown below, based on data gathered from the most recent two Joint Annual Reports.

Attachment 12

February 27, 2017

Year	2nd Year previous to Current Year	1st Year previous to Current Year	Current Year.	10:46 am Projected Year 1	Projected Year 2
Net Operating Margin Ratio	35.2%	29.5%	33.9%	33.4%	33.7%

- 3) Capitalization Ratio (Long-term debt to capitalization) – Measures the proportion of debt financing in a business's permanent (Long-term) financing mix. This ratio best measures a business's true capital structure because it is not affected by short-term financing decisions. The formula for this ratio is: (Long-term debt/(Long-term debt+Total Equity (Net assets)) x 100).

For the entity (applicant and/or parent company) that is funding the proposed project please provide the capitalization ratio using the most recent year available from the funding entity's audited balance sheet, if applicable. The Capitalization Ratios are not expected from outside the company lenders that provide funding.

Using the year-end financial statement for 2016, KESC's capitalization ratio is 8.62%. This was calculated by taking the total long-term debt, \$511,048, divided by the equity (\$5,416,468) + the long term debt, multiplied by 100.

- C. Discuss the project's participation in state and federal revenue programs including a description of the extent to which Medicare, TennCare/Medicaid and medically indigent patients will be served by the project. Additionally, report the estimated gross operating revenue dollar amount and percentage of projected gross operating revenue anticipated by payor classification for the first year of the project by completing the table below.

Applicant's Projected Payor Mix, Year 1

Payor Source	Projected Gross Operating Revenue	As a % of total
Medicare/Medicare Managed Care	\$23,215,501	70.5%
TennCare/Medicaid	\$386,286	1.2%
Commercial/Other Managed Care	\$8,035,977	24.4%
Self-Pay	\$485,809	1.5%
Charity Care	\$186,886	0.7%
Other (Workers Comp, Health Dept)	\$627,846	1.7%
Total	\$32,938,305	100%

- D. Provide the projected staffing for the project in Year 1 and compare to the current staffing for the most recent 12-month period, as appropriate. This can be reported using full-time equivalent (FTEs) positions for these positions. Additionally, please identify projected salary amounts by position classifications and compare the clinical staff salaries to prevailing wage patterns in the proposed service area as published by the Department of Labor & Workforce Development and/or other documented sources.

Attachment 13

Position Classification	Existing FTEs (2016)	Projected FTEs Year 1	Average Wage, January 27, 2017 (Contractual Rate)	Wide/Statewide Average Wage
a) Direct Patient Care Positions				
RN	19.0	23.0	\$27.23/hr	\$27.32/hr
Surgical Technicians	9.0	12.0	\$17.97/hr	\$18.33/hr
Nursing Aide	4.0	5.0	\$12.27/hr	\$10.76/hr
Total Direct Patient Care Positions	32.0	40.0		
b) Non-Patient Care Positions				
Administrator	1.0	1.0		Not available
Reception/Scheduling	3.0	3.5	\$13.95/hr	\$12.51/hr
Financial (Billing/AR/Acctg)	6.0	6.0	\$16.89/hr	\$15.13/hr
Medical Records	1.0	1.0	\$19.86/hr	\$15.35/hr
Total Non-Patient Care Positions	11.0	11.5		
Total Employees (A+B)	43.0	51.5		
c) Contractual Staff	0.2	0.2		
Total Staff (a+b+c)	43.2	51.7		

E. Describe all alternatives to this project which were considered and discuss the advantages and disadvantages of each alternative including but not limited to:

- 1) Discuss the availability of less costly, more effective and/or more efficient alternative methods of providing the benefits intended by the proposal. If development of such alternatives is not practicable, justify why not, including reasons as to why they were rejected.

KESC's Board of Governors and Members have spent over a year evaluating various options to ease the space constraints under which we are operating and to provide capacity to meet the needs of the growing 65+ population. Various scenarios were evaluated, including attempting to extend hours and adding on to the existing facility.

While adding hours would provide some capacity for additional surgeries, it does not address KESC's fundamental capacity issues. First, there is a limit to surgeons', anesthesia providers', and patients' willingness to have surgery late in the evening. While we can expand hours to a limited degree, it is not an adequate long-term solution to meeting the needs of the growing target population over time. Second, adding some evening hours does not address the opportunity to enable the faster cataract surgeons to expand their surgical capacity without adding additional hours of surgery, by utilizing two operating rooms, thereby eliminating the waiting period between cases for room turnover. Third, new surgeons joining KESC's medical staff need routine and stable surgical block time, which cannot be provided simply by adding evening hours.

Consideration was given to expanding the current building. However, after sketching out both the expansion and replacement options as well as obtaining budgetary pricing from a contractor, it was determined that the minimal cost difference between expansion of the existing building and building a new, replacement ASTC would be more than offset by the disruption to operations during the construction period, as well as the downtime that would be required to redo mechanical systems. In addition, the current facility's HVAC systems are